



*Kentucky High School Mock Trial Association
2024 - 2025 Competition Case*

ROBIN MCLEAN
v.
THUNDERBOLT SECURITY, INC

A Job for the Ages

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Though inspired in part by real cases, this case is a work of fiction. Any similarity to any person, alive or dead, is purely coincidental.

ACKNOWLEDGEMENTS

This case was created by the Kentucky High School Mock Trial Association Case Writing Committee. The Case Writing Committee would like to recognize Mr. Shamir Patel who created the Thunderbolt Security, Inc. logo and created Exhibit 1, Exhibit 2, and Exhibit 16; Hon. Erin Izzo for her assistance in creating Exhibit 3, Mr. Ethan Huffaker for his assistance in creating Exhibit 4 and Exhibit 11; the Hon. Joseph W. Castlen III, retired Circuit Court Judge for penning the letter in Exhibit 5; and Hon. Connie Kremer for her assistance in creating Exhibit 6 and Exhibit 15. Credit for the images in Exhibit 1 - istockphoto/AndreyPopov, istockphoto/ER_Creative, and istockphoto/Shock. Credit for the images in Exhibit 2 - istockphoto/AndreyPopov, istockphoto/Hispanollstlc, and istockphoto/JacobWacherhausen.

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KHSMTA thanks the John and Anita Kremer Charitable Fund for its generous donation to support the educational aims of KHSMTA.

Volunteers

KHSMTA thanks the many volunteers who give their time and talents to support the students and participants of the mock trial program.

CASE NOTES

While the KHSMTA Board and the Case Writing Committee strive for accuracy in all things, the nature of mock trial requires that certain technical aspects of competition cases be simplified or that reality in some instances must fall way to dramatic license due to the limited amount of time available for trials and the limited number of witnesses available.

KHSMTA welcomes ideas for future criminal and civil case problems. If you are interested in submitting case ideas or would be interested in volunteering in some aspect, please contact the Board at kymocktrial@gmail.com

CASE INTRODUCTION

Robin McLean worked for Thunderbolt Security, Inc. for approximately forty years before being terminated in a large-scale reduction in force at the beginning of 2021. While caring for an ill spouse, Robin used the next two years to take several classes at Scarborough Community College. In December 2022, Robin decided to go back to work and applied for an entry level guard position advertised by Thunderbolt, thinking the forty years of experience would weigh heavily in Robin's favor. Instead, Thunderbolt hired Ashley Owen, a much younger recent graduate from Scarborough Community College. Robin filed a complaint with the United States Equal Employment Opportunity Commission ("EEOC"), claiming that Thunderbolt's hiring decision was due to age discrimination. The EEOC conducted an investigation, but declined to take action, issuing Robin a "right to sue" letter, allowing Robin to seek redress in court on Robin's own. Robin filed suit in Castlen Circuit Court under the Kentucky Civil Rights Act. Thunderbolt will claim that its hiring decision was based on the merits of the candidates alone.

Following discovery, Thunderbolt moved for summary judgment in Castlen Circuit Court. That motion was denied as the trial court found that there are genuine issues of material fact requiring a jury trial.

SETTING

This case takes place in Kentucky, but in a fictional city and fictional county. Scarborough and Castlen County have populations of 60,000 and 100,000 respectively. Witness surnames as well as surnames for several non-witness characters are taken from the names of Kentucky's 120 counties. The top-ranking attorney and top-ranking witness for the 2025 Championship Round will have their names appear in the 2026 competition case if they so wish.

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COMMONWEALTH OF KENTUCKY
CASTLEN CIRCUIT COURT
DIVISION II
CASE NO. 23-CI-01979

ROBIN MCLEAN

PLAINTIFF

v.

THUNDERBOLT SECURITY, INC.

DEFENDANT

WITNESS LIST

FOR THE PLAINTIFF

1. Robin McLean (“Mc-LAIN”) – Plaintiff/Former Security Officer
2. Shawn Owsley (“OWS-lee”) – Former Thunderbolt Assistant Human Resources Director
3. Corey Spencer – Professor at Midlands State University College of Law

FOR THE DEFENDANT

1. Lane Elliott – Current owner of Thunderbolt Security, Inc.
2. Riley Gallatin – Human Resources Director at Thunderbolt Security, Inc.
3. Max Casey – Security Studies Chair at Scarborough Community College

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DEFENDANT

COMPLAINT

Comes now Robin McLean, by and through counsel, and for the Complaint against the Defendant, Thunderbolt Security, Inc. states and alleges as follows:

1. For all material times hereto, Plaintiff, Robin McLean is and was a resident of Scarborough, Castlen County, Kentucky.

2. For all material times hereto, Thunderbolt Security, Inc. is a Kentucky Corporation.

3. The events giving rise to this Complaint occurred in Scarborough, Castlen County, Kentucky.

4. This Court has jurisdiction over this action as the injuries and damages claimed herein exceed the minimum jurisdictional threshold of this Court.

5. In or around December 2022, the Defendant advertised an open position for an “Entry Level Security Officer.”

6. On or about December 15, the Plaintiff submitted an application for that position.

7. At the time of the application, the Plaintiff was over forty (40) years old.

8. At the time of that application, the Plaintiff was qualified for the position of Entry Level Security Officer as the Plaintiff had over forty (40) years’ worth of experience as a security officer.

9. There were only two applicants for the position, the Plaintiff and another individual named Ashley Owen.

10. For all material times hereto, Ashley Owen was under forty (40) years old.

11. The Plaintiff was plainly more qualified for the position, or in the alternative was better qualified for the position than Ashley Owen.

12. Despite the Plaintiff being plainly more qualified or better qualified for the position, the Defendant hired Ashley Owen.

13. The Plaintiff's age was a contributing and essential factor in the Defendant's decision to hire Ashley Owen instead of the Plaintiff in violation of the Kentucky Civil Rights Act.

14. For the Defendant's unlawful conduct, the Plaintiff is entitled to compensatory damages and attorney's fees.

WHEREFORE, the Plaintiff prays as follows:

1. For judgment against the Defendant for compensatory damages, including costs and award of a reasonable attorney's fee;

2.. Trial by jury on all issues so triable;

3. Any and all further relief to which the Plaintiff may appear entitled.

Respectfully Submitted

\s\ Mia Duggins

The Law Offices of Allison and Kremer, LLP
ATTORNEY FOR PLAINTIFF

COMMONWEALTH OF KENTUCKY
CASTLEN CIRCUIT COURT
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DEFENDANT

ANSWER

Comes now the Defendant, Thunderbolt Security, Inc., by and through counsel, and for its answer to the Complaint of Robin McLean states as follows:

1. The Defendant lacks sufficient information to admit or deny the allegations in Paragraph 1, and therefore denies the same.
2. The Defendant admits the allegations in Paragraph 2.
3. The Defendant lacks sufficient information to admit or deny the allegations in Paragraph 3 and denies the same.
4. The Defendant lacks sufficient information to admit or deny the allegations in Paragraph 4 and denies the same.
5. The Defendant admits the allegation in Paragraph 5.
6. The Defendant admits the allegation in Paragraph 6.
7. The Defendant admits the allegation in Paragraph 7.
8. The Defendant lacks sufficient information to admit or deny the allegation in Paragraph 8 and denies the same.
9. The Defendant admits the allegations in Paragraph 9.
10. The Defendant admits the allegations in Paragraph 10.
11. The Defendant denies the allegations in Paragraph 11.
12. The Defendant admits the allegations in Paragraph 12 insofar as the Defendant hired Ashley Owen over the Plaintiff. With respect to the remaining allegations in Paragraph 12, the Defendant denies the same.
13. The Defendant denies the allegations in Paragraph 13.
14. The Defendant denies the allegations in Paragraph 14.

15. The Defendant pleads that the Complaint fails to state a claim upon which relief can be granted.

16. The Defendant pleads that the Court lacks subject matter jurisdiction or particular case jurisdiction over this action.

17. The Defendant pleads any and all affirmative defenses set forth in CR 8.03 including, but not limited to accord and satisfaction, arbitration and award, assumption of the risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense.

WHEREFORE the Defendant prays as follows:

1. That the Complaint be dismissed with prejudice and the Plaintiff take nothing;
2. For trial by jury on all issues so triable;
3. For any and all other relief to which the Defendant may be entitled.

Respectfully submitted,
\s\ Erin Izzo
Izzo Law Group, LLP
ATTORNEY FOR DEFENDANT

COMMONWEALTH OF KENTUCKY
CASTLEN CIRCUIT COURT
DIVISION II
CASE NO. 23-CI-01979

ROBIN MCLEAN

PLAINTIFF

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THUNDERBOLT SECURITY, INC.

DEFENDANT

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This matter is before the Court on the Defendant's Motion for Summary Judgment. Motion having been made, the Court having considered the arguments of counsel as well as the applicable law and the Court being otherwise sufficiently advised denies the Motion.

This is an age discrimination case under the Kentucky Civil Rights Act. Prior to 2021, the Plaintiff had completed approximately forty years of service in the employ of the Defendant as a security officer. In January 2021, the Plaintiff's employment was terminated (along with numerous others) due to a reduction in force. However, this lawsuit does not concern that termination; indeed, the Plaintiff signed a severance agreement waiving any possible claims from that termination. Instead, over the next two years, the Plaintiff took security courses and technology courses as a part-time student at Scarborough Community College and later applied for an open position as an entry level security officer with the Defendant employer.

There were two candidates for the position: the Plaintiff and a much younger candidate, Ashley Owen ("Owen"). The Defendant hired Owen over the Plaintiff. Because of that choice, the Plaintiff filed this lawsuit claiming that the Defendant discriminated against the Plaintiff because of the Plaintiff's age.

The Defendant filed a motion for summary judgment arguing that there is no genuine issue of material fact, and it is entitled to judgment as a matter of law. In particular, the Defendant argues that (1) the Plaintiff is not qualified for the position; (2) the Defendant has valid, non-discriminatory reasons for choosing to hire Owen over the Plaintiff; and (3) in any

event, the Plaintiff cannot show that age was the sole reason why the Defendant chose to hire Owen.

In moving for summary judgment, the Defendant must show that there are no genuine issues of material fact and that they are entitled to judgment as a matter of law. In layman's terms, this means that the Defendant is telling the Court that there is no need for a trial, because under no circumstances could the Plaintiff produce evidence at trial sufficient for a jury to find in favor of the Plaintiff.

It is important to remember that in deciding this Motion, the Court is *not* the jury. The jury decides what evidence to accept and reject, which witnesses to believe or not believe, and how to interpret the evidence. Furthermore, in making this ruling, the Court must look at the evidence in the light most favorable to the Plaintiff. The Defendant cannot win just because the Court might think that the Defendant may have the stronger case (or not). The Court can grant summary judgment if, and only if, after looking at the evidence in the light most favorable to the Plaintiff, it is clear that the evidence can only be interpreted in a single way in favor of the Defendant.

Age discrimination in Kentucky is governed by the Kentucky Civil Rights Act under KRS 344.040(1)(a). That statute provides in relevant part "It is an unlawful practice for an employer to fail or refuse to hire . . . an individual, or otherwise discriminate against an individual. . . age forty (40) or over."

Few employers will ever explicitly admit that the reason why they refused to hire a protected person was because of discrimination. Instead, a plaintiff in a discrimination case must prove his or her case using circumstantial evidence. Circumstantial evidence is indirect evidence.

In other words, a plaintiff can use the words and actions of an employer, even those that are not directly directed at that plaintiff, to show that the employer's decision not to hire the plaintiff was motivated by discriminatory animus (i.e., hostility towards a protected group). Furthermore, the plaintiff is not required to show that discriminatory animus was the sole reason for the hiring decision; the plaintiff need only show that discriminatory animus was one of the substantial motivating factors in the hiring decision.

The framework to determine if a hiring decision was based on discriminatory animus is the "burden shifting" framework under *McDonald Douglas Corp v. Green*, 411 U.S. 792 (1973). Under that burden shifting framework, there are three parts:

FIRST: The plaintiff must prove by a preponderance of the evidence that he or she (1) is a member of a protected class (in this case age forty or over); (2) was not hired; (3) was qualified for the position; (4) the employer hired someone who was not in the protected class. If the plaintiff meets this burden, the plaintiff has made a *prima facie* case of employment discrimination. This does not mean the plaintiff absolutely wins, but instead that the plaintiff has proven enough that the Court moves to the next step. However, if the Plaintiff cannot prove its case by a preponderance of the evidence as to this prong, then the Defendant wins and there is no need to go any further.

SECOND: The burden moves to the defendant to articulate at least one legitimate, non-discriminatory reason for hiring the non-protected person over the plaintiff. This burden is not onerous, the defendant employer only needs to make a *prima facie* showing that it made the hiring decision for a non-discriminatory reason. What this means is that the defendant employer only needs to offer a reason that on its face shows it made the hiring decision for a reason other than discrimination. If the defendant does *not* make that showing, the Plaintiff wins. But if the defendant does give a non-discriminatory reason for the hiring decision, the Court moves to the third step.

THIRD: The burden shifts back to the Plaintiff to show that the defendant's non-discriminatory reason(s) for the hiring decision was pretext for discrimination. In other words, the Plaintiff must show that the defendant's proffered non-discriminatory reason(s) is an excuse for its real reason, which is discrimination.

In its Motion for summary judgment, the Defendant argues (1) that the Plaintiff, Robin McLean was not qualified for the position and (2) that even if the Plaintiff was qualified, the Plaintiff cannot show that the Defendant's reason for choosing Owen was pretext for discrimination.

The Court will first examine whether there is a genuine issue of material fact that the Plaintiff is qualified for the position. Both parties agree that the Plaintiff is a member of a protected class (aged forty or over), that the Plaintiff was not chosen for the position, and that the Defendant chose a candidate who was not a member of the protected class over the Plaintiff. However, the Defendant argues that the Plaintiff cannot show that the Plaintiff was qualified for the position because of the Plaintiff's poor track record with security technology and attitude towards technological change. If the Defendant is correct, then the Court need go no further.

That is because should the Defendant be entitled to judgment as a matter of law on the issue of whether the Plaintiff is qualified for the position, then the Plaintiff loses outright.

As mentioned above, the Plaintiff had approximately forty years of experience as a security officer. That in and of itself is enough for a jury to find that the Plaintiff was qualified for the position (though the jury is not *required* to do so). Furthermore, those years of experience were in the Defendant's employ, the Plaintiff was offered promotions in the past (and turned them down) and after the reduction in force, the Plaintiff took courses at Scarborough Community College in security technology courses. Thus, there is enough evidence for a jury to find the Plaintiff is qualified for the position. The Defendant is perfectly free to offer its own arguments and evidence in opposition; and the Defendant certainly has evidence to the contrary, though the burden remains on the Plaintiff to show that the Plaintiff is qualified for the position. However, it is not the Court's job to weigh the evidence and find who has the better argument. That is the role of the jury.

Secondly, the Defendant argues it has valid, non-discriminatory reasons for choosing Owen over the Plaintiff, and that the Plaintiff cannot show that its reasons were pretext for discrimination. Namely, the Defendant argues that Owen had stronger technology skills than the Plaintiff and that the Plaintiff had some disciplinary problems during the Plaintiff's initial employment. These are not the only reasons offered, but the primary reasons. Indeed, an employer is allowed to use its discretion in choosing among qualified candidates, so long as the selection is not based on any discriminatory criteria.

Thus, the Defendant's non-discriminatory reasons are indeed valid on their face. However, whether those reason were pretext for age discrimination is not so clear. Pretext is proven through circumstantial evidence; in other words, evidence that can lead a jury to infer that the reason the Plaintiff was not hired was pretextual. The Plaintiff points several different types of evidence that can show pretext. The Court will only explore a couple of examples rather than analyze an exhaustive list.

For example, the Plaintiff claims to be the "plainly superior candidate," and no reasonable employer would have chosen Owen. If the Plaintiff were to establish this, it would raise an inference that the decision to hire Owen was based on age discrimination. However, that is all the Plaintiff would have done- raise an inference. It would be up to the jury to decide if it would make that leap, but the jury may certainly do so. The Plaintiff also claims that statistics

relating to the reduction in force and later hiring statistics following the reduction in force show animus towards older workers, which can lead to an inference that the decision to hire Owen was based on discriminatory animus towards older workers. Again, such statistics only raise an inference - it is up to the jury to decide if it would make that leap. Moreover, the plaintiff also claims that certain statements, both directly related to age and those using “coded language” show that there was a discriminatory atmosphere at the Defendant’s business, showing that the decision to hire Owen was based on discriminatory animus - again, this evidence (if believed) only raises an inference - it is up to the jury to decide if it would make that leap.

In turn, the Defendant insists that there was no discriminatory intent in its hiring decision, and questions not only the admissibility of some of the Plaintiff’s purported evidence, but also denies that decisionmakers Lane Elliott and Riley Gallatin made certain statements and that other statements were taken out of context. However, whether the certain statements were made and other statements taken out of context are questions of fact. Again, it is up to the jury to decide if they believe if statements were made and the context.

The Court will narrow a few of the triable issues. Regarding the first prong of the *McConnell Douglas* analysis, the Court notes that there is no dispute that the Plaintiff is a member of a protected class, that the Plaintiff was not hired for the position, and that the person who was hired was not a member of a protected class. Therefore, the only issue that remains regarding the first prong is whether the Plaintiff was qualified for the position. Should the Plaintiff succeed in establishing that the Plaintiff was so qualified, then the burden shifts to the Defendant, and the Defendant need only offer one or more facially valid non-discriminatory reason for hiring Owen over the Plaintiff. Should the Defendant do so, then the burden shifts back to the Plaintiff to show that the facially valid non-discriminatory reason(s) is pretext.

The Court agrees with the Defendant that at least some of the Plaintiff’s available evidence may violate the Rules of Evidence. Likewise, some of the Defendant’s available evidence may violate the Rules of Evidence. Because the Court does not know what strategies the parties intend to utilize nor what evidence the parties intend to introduce, the Court will refrain from making any rulings regarding admissibility at this time aside from those already decided in the Special Instructions. The Court will decline to revisit any of those issues at trial. The Court also notes that the parties have entered into a number of stipulations, and no party will be allowed to withdraw those stipulations at this time.

Furthermore, the Court does not and will not make any suggestions to either side as to what evidence to present or arguments to make. That is a matter of trial strategy. Nor will the Court decide which side has the stronger case; that is solely the function of the jury.

For the foregoing reasons **IT IS ORDERED AND ADJUDGED** that the Defendant's Motion for Summary Judgment be and hereby is **DENIED**.

This the 3rd day of September, 2024

/s William C. Mattingly
Hon William C. Mattingly, Judge
Castlen Circuit Court, Division II

COMMONWEALTH OF KENTUCKY
CASTLEN CIRCUIT COURT
DIVISION II
CASE NO 23-CI-01979

ROBIN MCLEAN

PLAINTIFF

v.

THUNDERBOLT SECURITY INC.

DEFENDANT

JURY INSTRUCTIONS

INSTRUCTION NO. 1

Immediately upon retiring to the Jury Room, you will elect a foreperson. Nine or more jurors may reach a verdict. Your verdict will consist of the answers you make to the questions contained in these instructions. If all twelve of you agree on an answer to a question, then only the foreperson need sign the answer. If less than twelve, but nine or more agree, then all of those who agree must sign the answer.

INSTRUCTION NO. 2

Do you believe by a preponderance of the evidence that the Plaintiff, Robin McLean, was qualified for the position of Entry Level Security Officer?

ANSWER: YES _____ NO _____

FOREPERSON, IF UNANIMOUS

IF YOU ANSWERED YES, PROCEED TO INSTRUCTION NO. 3

IF YOU ANSWERED NO, THEN YOU HAVE FOUND FOR THE DEFENDANT AND MAY STOP.

INSTRUCTION NO. 3

The Defendant, Thunderbolt Security, Inc. has offered a non-discriminatory reason(s) for not hiring the Plaintiff, Robin McLean. Do you believe by a preponderance of the evidence:

1. That the reason(s) offered by the Defendant for not hiring the Plaintiff are pretextual for age discrimination; AND
2. That the Plaintiff's age was a contributing and essential factor in its decision to not hire the plaintiff?

ANSWER: YES _____ NO _____

FOREPERSON, IF UNANIMOUS

IF YOU ANSWERED YES, YOU HAVE FOUND FOR THE PLAINTIFF.

IF YOU HAVE ANSWERED NO, THEN YOU HAVE FOUND FOR THE DEFENDANT.

Instructions given this
____ day of _____, 2025
Hon. _____
Judge, Division II
Castlen Circuit Court

COMMONWEALTH OF KENTUCKY
CASTLEN CIRCUIT COURT
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DEFENDANT

STIPULATIONS

The parties have stipulated as follows:

1. The parties stipulate that all exhibits are authentic and accurate in all respects. No objection to the authenticity of exhibits shall be honored. Furthermore, any exhibit may be offered either in color or black and white format. No objection will be honored on an exhibit being presented either in color or black or white.
2. All signatures on witness affidavits are authentic. If asked, a witness must acknowledge signing the document(s) on the date(s) thereon. The witness affidavits are deemed to have been given under oath or affirmation.
3. The Defendant stipulates that venue is appropriate and that service of process was proper. The Defendant further stipulates that any and all administrative remedies have exhausted, that all proper deadlines for administrative actions were met, and that this action was filed within the appropriate statute of limitations.
4. The parties stipulate that Thunderbolt Security, Inc. is a corporation organized under the law of the Commonwealth of Kentucky and is in good standing.
5. The parties stipulate that Robin McLean and Ashley Owen possessed the requisite physical fitness for the position at issue in this case at the time of their applications and still possess the requisite physical fitness for the position at issue at the time of trial.
6. The parties stipulate neither Robin McLean nor Ashley Owen have any criminal record. The parties further stipulate that Robin McLean and Ashley Owen possess valid Kentucky motor vehicle operator's licenses and further stipulate that any and all available records show that neither Robin McLean nor Ashley Owen have any record of traffic infractions.
7. The parties stipulate that neither Robin McLean nor Ashley Owen currently have, nor have ever had, any substance abuse problems.

8. The parties stipulate that Ashley Owen's date of birth is October 31, 2001.
9. The parties stipulate that the affidavits of Corey Spencer and Max Casey contain all the expert opinions those respective experts will testify about at trial, as well as the substance of those opinions and the facts behind those opinions as required in *Clephas v. Garlock*, contained in the available case law.
10. The parties stipulate that Exhibits 1, 7, 8, 9, and 10 are admissible in their current form and may be introduced through any witness with personal knowledge of their contents. Furthermore, the parties stipulate that Robin McLean and Ashely Owen have executed the appropriate waivers under the Family Educational Rights and Privacy Act (FERPA) regarding Exhibits 9 and 10.
11. The parties stipulate that the photographs in Exhibit 4 are true and accurate screenshots from Robin McLean's cellular telephone and accurately represent the text message exchange between Robin McLean and Shawn Owsley on March 14, 2023, and that any party with such knowledge may so testify. The parties further waive any hearsay objection to Exhibit 4, ***but not*** any other objection.
12. The parties stipulate that the letter in Exhibit 5 was written by Amos Floyd on the date indicated and that the letter is Amos Floyd's handwriting.
13. The parties stipulate that the Exhibit 6 is the severance agreement signed by Robin McLean during the 2021 reduction in force at Thunderbolt Security, Inc.
14. The parties stipulate that Exhibit 7 is a true and accurate copy of Addendum A to the severance agreement signed by the parties in Exhibit 6. The parties further stipulate that Exhibits 6 and 7 ***do not*** have to admitted simultaneously and that the admissibility of one exhibit is not required for the other.
15. The parties stipulate that the statistics in Exhibit 8 were compiled by the United States Equal Employment Opportunity Commission during its investigation into Robin McLean's complaint to that Commission.
16. The parties stipulate that the email in Exhibit 11 is a true and accurate copy of the email sent by Lane Elliott to Thunderbolt Security, Inc.'s clients with Thunderbolt's account managers carbon copied. The parties further stipulate that the custodian of records has personal knowledge that the email is true and accurate and has not been altered, and the parties waive any requirement that the custodian so testify.
17. The parties stipulate that Exhibit 16 is the front of the birthday card given to Shawn Owsley by Riley Gallatin on Owsley's 50th birthday. ***While not waiving any other objections***, the parties stipulate if otherwise admissible, the rest of the card does not need to be introduced at trial.

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DEFENDANT

SPECIAL INSTRUCTIONS

1. The trial will be treated as bifurcated and deal with liability only. Damages, if any, will be considered in a separate proceeding.
2. Under Kentucky law, jury instructions in a civil action do not mention the standard of proof, nor are the parties allowed to mention or define the preponderance of the evidence standard. However, because of the educational nature of mock trial, the students will be allowed to do so, and presiding and scoring judges will be informed of this instruction.
3. The jury instructions provided will be the ones given at trial. Teams are specifically allowed to use jury instructions in closing arguments, including the instruction that the verdict need not be unanimous. It will be presumed that the presiding judge will have read the jury instructions prior to closing arguments. Furthermore, notwithstanding instruction one, for mock trial purposes, the verdict shall not be determined, nor read; rather the outcome of each trial shall be determined solely upon the scoring procedure set forth in the tournament rules. However, in the Championship Round at the State Championship tournament, the presiding judge shall read the “verdict” as a means of announcing the winner of the 2025 State Championship. In such case, the “verdict” will be deemed to be in favor of the party prevailing under mock trial scorekeeping rules and procedures instead of two-thirds of the jury finding for the purposes of the prevailing party.
4. The Jury Instructions in this case are more extensive than what would normally be given in an actual Kentucky trial on age discrimination. *See Norton Health Care v. Disselkamp*, 600 S.W. 3d 696 (Ky. 2020). This is done so that the students better understand (and argue) the issues at trial and so that the judges can determine that students understand the issues at trial. The presiding and scoring judges will be informed of this instruction.
5. For the purposes of this case, the state of Midlands is the 51st state in the United States and is located in the Mountain Time Zone, approximately one thousand miles away from Scarborough, KY.

6. No party may ask any witness to describe any aspect of the operation of the Artemis Security System, or any other security system, other than what is specifically in that witness's affidavit.
7. The only witnesses who may sit at Plaintiff and Defendant counsel tables are Robin McLean and Lane Elliott, respectively. Teams are not required to have those witnesses sit at counsel table.
8. The Castlen Circuit Court has entered the following orders. None may be amended or litigated during trial:
 - A. Following an evidentiary hearing, the Defendant's motion to exclude the testimony of Professor Corey Spencer under Rule 702 and the Plaintiff's motion to exclude the testimony of Professor Max Casey under Rule 702 are both overruled. Rule 702 is not limited to just scientific testimony; it extends to witnesses who possess "scientific, technical, or other specialized knowledge that will assist the trier of fact."
 - i. Regarding Professor Spencer, the Court notes that testimony about "indicia of discrimination" and "coded language" are outside the knowledge and experience of ordinary lay persons. The Court believes that such testimony is relevant and probative to the issues in this trial. Certainly, the statistical evidence, both as to the reduction in force and hiring statistics are relevant and probative. However, while Professor Spencer may testify about "indicia" of discrimination, Professor Spencer may not opine as to whether Thunderbolt Security, Inc definitively (or not) engaged in unlawful discrimination in deciding not to hire the Plaintiff. That is for the jury alone to decide.
 - ii. Regarding Professor Max Casey, the Court notes that the qualifications of the modern security officer are outside the knowledge and expertise of ordinary lay persons, and Professor Casey may offer opinions about whether the Plaintiff is qualified for the position of "entry level security officer," and may offer opinions comparing the qualifications of the Plaintiff and Ashley Owen
 - iii. For the benefit of the jury, both parties must still lay foundation as to each respective witness's education and qualifications as well as the materials and information utilized to come to their respective opinions. The information contained in each expert's respective affidavit is sufficient for their testimony to be presented to the jury.

- iv. Nothing in this order is intended to prevent the opposing party from questioning the opposing witness about their opinions, bias, methods, or sources utilized. Such questioning going to the weakness of an expert's opinion shall go to challenge the weight the jury will give to that witness rather than the admissibility of their testimony.
 - v. Nothing in this order is intended to prevent objections to any other rule of evidence or to opinions clearly outside the witness's expertise.
- B. The Court understands that the 2021 reduction in force may have violated the Federal Worker Adjustment and Retraining Notification (WARN) Act. However, the Plaintiff has not pled that claim, nor has any other affected employee done so. Therefore, the Court will grant Defendant's motion under Rule 403 to prohibit any mention of a WARN Act violation as the risk of unfair prejudice would substantially outweigh the probative value. However, this Order is limited *solely* to mentions of violation of the WARN Act, not to any other evidence regarding the 2021 reduction and force relevant and probative to the Plaintiff's discrimination claim.
9. Exhibit 5A is a typed version of the handwritten letter in Exhibit 5. It is included *solely* because of readability concerns with Exhibit 5 in its current form. Exhibit 5A is NOT admissible in any form and may not be used for any other purpose than to assist with reading and understand Exhibit 5.

COMMONWEALTH OF KENTUCKY
CASTLEN CIRCUIT COURT
DIVISION II
CASE NO. 23-CI-01979

ROBIN MCLEAN

PLAINTIFF

v.

THUNDERBOLT SECURITY, INC.

DEFENDANT

STATUTES AND CASE LAW

Except where indicated, the following are actual Kentucky statutes and Kentucky and Federal cases. With regards to statutes, only relevant portions of the statute will be provided. For mock trial purposes, teams are limited to the statutes or portion of statutes found here.

With regards to cases, internal citations within case law are omitted for brevity. A number of cases come from other jurisdictions that may be somewhat different than from Kentucky state courts or the United States Court of Appeals for the 6th Circuit. The cited case excerpts will control the 2024-2025 KHSMTA mock trial case. For mock trial purposes, teams are only allowed to quote and use the cited excerpts during trial. Citations are provided in case interested teams wish to read those cases in full as a solely educational exercise. Any “not to be reported” case (i.e., with a Westlaw or WL citation) are to be treated as “reported” cases - and thus citable and carrying prudential weight - for mock trial purposes.

TEAMS ARE STRICTLY PROHIBITED FROM USING ANY AUTHORITY OTHER THAN THE KENTUCKY HIGH SCHOOL RULES OF COMPETITION, THE KENTUCKY HIGH SCHOOL RULES OF EVIDENCE, AND THE PROVIDED AUTHORITY IN THIS CASE PROBLEM.

STATUTES

Kentucky Civil Rights Act

KRS 344.040 Unlawful discrimination by employers

- (1) It is an unlawful practice for an employer
 - (a) To fail or refuse to hire, or to discharge any individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, because of the individual’s race, color, religion, national origin, sex, age forty (40) and over, because the person is a qualified individual with a disability, or because the individual is a smoker or nonsmoker, as long as the person complies with any workplace policy concerning smoking;

CASE LAW

ELEMENTS OF A DISCRIMINATION AND SHIFTING BURDEN

Charalambik v. Ashbury University, 488 S.W. 3d 568 (Ky. 2016)

When a plaintiff's claim for a violation of the KCRA relies on circumstantial evidence, courts in Kentucky follow the framework in the United States Supreme Court case of *McDonnell Douglas Corp. v. Green*.

McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)

The framework for proof in a hiring discrimination action is as follows: First, the Plaintiff must show that he or she (1) is a member of a protected class; (2) was not hired; (3) was qualified for the job; (4) the employer hired someone who was not in the protected class.

If the Plaintiff has met that burden, then the Plaintiff has made a *prima facie* case for discrimination. The burden then shifts to the Defendant to articulate a legitimate, nondiscriminatory reason for the action it took.

If the Defendant offers such a reason, the burden then shifts back to the Plaintiff to show that the proffered reason is mere pretext for discrimination.

DISCRIMINATION: BURDENS OF PROOF

Wal-Mart Stores, Inc. v. Williams, 2003 WL 22220103 (Ky. 2003)

Under the *McDonnell Douglas* burden-shifting framework, the plaintiff must first prove by a preponderance of the evidence that he or she (1) is a member of the protected class; (2) was not hired; (3) was qualified for the position; and (4) that the employer hired someone who was not in the protected class. If the Plaintiff succeeds, then the burden shifts to the Defendant to articulate a legitimate, nondiscriminatory reason for its choice. The Defendant need only articulate a facially non-discriminatory reason; the Defendant does not have to meet the preponderance of the evidence standard. Should the Defendant do so, the burden shifts back to the Plaintiff to show by a preponderance of the evidence that the Defendant's decision not to hire the Plaintiff is merely pretext for discrimination.

Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981)

Even in light of the shifting burdens of the *McDonnell Douglas* framework, the Plaintiff retains the ultimate burden of persuading the jury that the Defendant would not have made the employment decision but for a discriminatory reason.

Reeves v. Sanderson Plumbing Products, Inc. 530 U.S. 133 (2000)

It is not enough that the jury *disbelieve* the employer's proffered non-discriminatory reason; instead, the jury must *believe* the plaintiff's explanation of intentional discrimination.

Thompson v. Commonwealth, 2019 WL 103866 (Ky. App. June 17, 2011)

Preponderance of the evidence means that more likely than not an event occurred.

DISCRIMINATION: CAUSATION

Meyers v. Chapman Printing Co., Inc., 840 S.W. 2d 814 (Ky. 1992)

A plaintiff must show that the adverse employment action would not have happened but for a discriminatory reason. However, under Kentucky law, “but for” does not mean that a discriminatory reason be the *sole* cause for the adverse employment action - only that it be a contributing and essential factor.

First Property Management Corp. v. Zaerbidaki, 867 S.W. 2d 185 (Ky. 1993)

An employer does not escape liability if it would have taken the adverse employment action anyway, even absent the lawfully impermissible reason, so long as the jury believes that the impermissible reason did in fact contribute as one of the substantial motivating factors in making that decision.

Johnson v. Lexington-Fayette Urban County Government, 2019 WL 994390 (Ky. App. 2019)

An employer is not prohibited from using its discretion in choosing among qualified candidates so long as the selection is not based on discriminatory criteria.

DISCRIMINATION: WHETHER PLAINTIFF WAS QUALIFIED

Porter v. Exxon Mobil Corp., 246 F. Supp. 2d 615 (S.D. Texas 2003)

Whether a plaintiff in an age discrimination case is qualified for the position is a question of fact for the jury. Being employed in a particular position for more than thirty years is sufficient enough evidence for a jury to find that the plaintiff is qualified for a position, but whether that plaintiff truly is qualified is ultimately up to the jury.

DISCRIMINATION: PRETEXT

Fallis v. Kerr-McGee Corp., 944 F. 2d 743 (10th Cir. 1991)

It is uniformly recognized that statistical data showing an employer’s pattern of conduct toward a protected class can create an inference that an employer discriminated against individual members of the class.

Bartlett v. Gates, 421 Fed. Appx. 485 (6th Cir. 2010)

Relative qualifications between two candidates can establish pretext when the evidence shows either (1) the plaintiff was a plainly superior candidate, such that no reasonable employer would have chosen the latter applicant over the former, or (2) the plaintiff was as qualified, if not better qualified than the successful applicant, and the evidence shows other probative evidence of discrimination. However, even if such evidence is shown, it is still up to the jury to determine whether or not such evidence demonstrates pretext.

Conway v. Electro Switch Corp., 825 F. 2d 593 (1st Cir. 1987)

Discriminatory statements by decisionmakers are relevant and admissible to establish a discriminatory atmosphere in an organization. Such evidence is not conclusive proof of discrimination against an individual plaintiff, but such evidence is relevant as to the “corporate state of mind” with respect to actions taken against an individual plaintiff.

Ash v. Tyson Foods, Inc. 546 U.S. 454 (2006)

A decisionmaker's remarks about race, age, or gender *may* be an indicator of discriminatory bias. The strength and credibility of such evidence are for the jury to determine. Whether the remarks indicate bias depends on the decisionmaker's meaning, which may depend on various factors including context, inflection, tone of voice, local custom, and historical usage.

Metoyer v. Chassman, 504 F. 3d 919 (9th Cir. 2007)

Discriminatory or bigoted remarks by decisionmakers directed at someone other than the plaintiff is admissible as evidence of discriminatory bias or intent.

Indurante v. Local 705, Int'l Brotherhood of Teamsters, AFL-CIO, 160 F. 3d 634 (7th Cir.

1988)

"Stray remarks," or biased comments made by a decisionmaker but not related to the disputed employment action, may be relevant to pretext.

Tomassi v. Insignia Financial Group, Inc., 478 F. 3d 111 (2d Cir. 2007)

When looking at whether a stray remark is more prejudicial than probative under Rule 403, the more a remark shows a discriminatory state of mind and the closer the remark's relation to the allegedly discriminatory behavior, the more probative the remark will be.

Ansell v. Green Acres Contracting Co., 347 F. 3d 515 (3rd Cir. 2003)

Evidence that an employer treated other members of a protected class favorably is admissible of evidence that the employer lacked discriminatory intent. Such evidence is not considered character evidence because it is offered as circumstantial evidence of the employer's state of mind rather than propensity. However, such evidence is not *conclusive* that the employer lacked discriminatory intent; it merely creates an inference of such.

DISCRIMINATION: ENFORCMENT AGENCY ACTIONS

Kirby v. J.C. Penny Corp, Inc., 2009 WL 3572494 (W.D. Penn. 2009)

An EEOC Dismissal and Notice of Rights (also called a "right to sue letter,") is neither automatically admissible nor automatically inadmissible. Instead, the admissibility of such letters must be made on a case-by-case basis under Rule 403.

HEARSAY

Harris v. Commonwealth, 384 S.W. 3d 117 (Ky. 2012)

The term "assertion" for the purposes of the hearsay rule means a "statement or expression of a fact, condition, or opinion."

Slaven v. Commonwealth, 962 S.W. 2d 845 (Ky., 1997)

If an out of court statement is offered only to prove that the statement was made, that statement is not hearsay.

Daugherty v. Commonwealth, 467 S.W. 3d 222 (Ky. 2015)

Questions, orders, and threats are not hearsay as they are not declarations of fact and therefore are not capable of being true or false. In essence, such “statements” contain no assertion. Thus, they are not offered to prove the truth of the matter and are not hearsay.

QUESTIONS REGARDING ANOTHER WITNESS’S CREDIBILITY

Moss v. Commonwealth, 949 S.W. 2d 579 (Ky. 1997)

With few exceptions, it is improper to require a witness to comment on the veracity of another witness. A witness’s opinion about the truth of the testimony of another witness is not permitted. Neither expert nor lay witness may testify that another witness or party is lying or faking. That determination is for the jury alone.

Patel v. Rogers, 998 S.W. 3d 100 (Ky. 2023)¹

It does not violate *Commonwealth v. Moss* when a witness merely testifies that he or she has a different recollection or different understanding regarding a conversation a witness testified about. Witnesses often have different recollections of conversations, and it is up to the jury to decide which witness is more credible. *Moss* is only violated if a witness says that the prior witness lied when testifying about the conversation.

EXPERT WITNESSES

Edwards v. Commonwealth, 554 S.W. 2d 380 (Ky. 1977)

The credibility of every witness, including expert witnesses, is subject to attack and cross-examination, this being the primary means by which trial counsel can attempt to persuade jurors of the weight or significance to be attached to the testimony of the witnesses.

Clephas v. Garlock, 168 S.W. 3d 389 (Ky. App. 2004)

Kentucky law requires that parties disclose the subject matter of each expert expected to testify at trial as well as the substance of the facts and opinions to which the expert is expected to testify. Therefore, testimony by an expert as to undisclosed opinions should be excluded at trial.

GOLDEN RULE ARGUMENTS

Stanley v. Ellegood, 382 S.W. 2d 572 (Ky. 1964)²

“Golden rule” arguments, i.e., arguments where counsel asks the jury to place themselves or members of their families or friends in the shoes of a party or witness, are improper.

¹ This is a fictional Kentucky Supreme Court case for use in this case problem.

² While objections are not permitted in opening or closing statements, scoring judges are allowed to factor improper argument into their scoring. Whether an individual judge does so, and to what extent, is up to each individual scoring judge.

AFFIDAVIT OF ROBIN MCLEAN

1 My name is Robin McLean. I was born August 5, 1961, here in Scarborough, KY.

2 Throughout most of my adult life, I worked as a security guard or security officer (to me they are
3 the same thing) at Thunderbolt Security, Inc. I was hired there in 1980. At the time, Thunderbolt
4 was a fairly new company, started by a young entrepreneur named Amos Floyd. I gave over forty
5 years of loyal service until I was laid off as a part of a “restructuring plan” by Mr. Floyd’s
6 successor and grandchild, Lane Elliott. This lawsuit is not about that layoff; indeed, I would have
7 had to resign or at least take a leave of absence to help care for my spouse about that time.

8 Instead, this lawsuit is about what happened when I was ready to go back to work and applied for
9 an open job with Thunderbolt at the end of 2022.

10 To understand why I am suing today, I must go all the way back to 1980. I will sound
11 like every other old person (or “old timer,” as is apparently what the new management at
12 Thunderbolt would call me) when I say that things were different back then. They truly were.
13 During high school, I was never considered “college material,” and graduation meant it was time
14 to get a job. All those websites like LinkedIn and Indeed didn’t exist, so I did what anyone
15 looking for a job did back then - I searched the classified section of the newspaper. There I saw
16 an advertisement for a company to rent out security guards for businesses and events. I called the
17 phone number listed (no email back then!) and made an appointment to apply.

18 When I arrived, I filled out an application (with a pen and in cursive) and had a brief
19 interview with Mr. Floyd himself. Thunderbolt was small back then, so there were no “human
20 resources managers,” that was all done by Mr. Floyd. Mr. Floyd explained his business model -
21 many organizations needed security guards for their facilities or for events but could not afford
22 to hire guards full time. Instead, Mr. Floyd would offer trained uniformed guards for facilities
23 and events on a contract basis. Mr. Floyd explained that while I might have to use force or detain
24 individuals, I was not a police officer, nor would I have police powers. Mr. Floyd said that if I
25 understood that and promised to do my best, then I would have a job. I agreed, and we shook on
26 it. The next day, I was a Thunderbolt Security, Inc. employee!

27 I learned the job while on the job from more senior security guards. I keep saying it, but
28 again, things back then were different. Have you ever seen those old movies where there was a
29 security guard walking down a dark corridor with a flashlight, a nightstick, and a walkie-talkie?
30 That wasn’t too far off the mark; at least when I was doing night patrol in a factory or
31 warehouse. Other times, I would be walking through crowds at a parade or concert. Or I might be

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32 escorting college kids to their cars at night after an evening class. Sometimes, I would be sitting
33 guard at a convenience store or liquor store.

34 Some clients had their “preferred guards,” but I was happy to work in a lot of different
35 places. You learn a lot about people that way! Hours were irregular sometimes, but Mr. Floyd
36 always made sure that guards had at least 40 hours a week and as much overtime as we wanted!

37 Of course, things changed over time. Thunderbolt grew from a small organization with a
38 few dozen guards to one with over one hundred! This became too much for Mr. Floyd to handle
39 himself. He had to promote guards to account managers to deal with clients (as well as hire them
40 from the outside) as well as hire human resource managers to help with the paperwork,
41 especially with turnover among guards. There was always some turnover, but not like other
42 security companies. A lot of us, especially early Thunderbolt employees, were loyal to Mr. Floyd
43 because he was loyal to us and looked out for us. Even in times where business was slow, I can’t
44 think of a time where he laid anyone off.

45 As for me, during my decades at Thunderbolt, I was sometimes offered a promotion to
46 account manager, especially since a lot of clients liked me. I always turned it down; I liked being
47 an ordinary security guard. In my personal life, I got married in 1983, and my spouse worked in
48 human resources at Federal Ranch Insurance Company. We raised two wonderful children who
49 have moved away from Scarborough and have careers and families of their own.

50 Going back to things changing over time, so did my job. And I mean more than just the
51 places where I was sent to work or the people I interacted with. Just like how music transitioned
52 from records to cassettes to compact discs to... whatever format kids use these days... so did
53 technology we used as security guards. When I started, we typed up reports on a typewriter, and
54 on rare occasions we needed to take pictures, we had to decide whether it was necessary for
55 polaroids or just wait for film to be developed. Today you just take a picture on your cellular
56 phone. Security cameras did exist, but they were not as widespread as today. Only major clients,
57 like banks, had them at first. And if they recorded anything, it was on VHS tape.

58 I adjusted pretty well at first to all the technological changes. I helped those who were ten
59 or twenty years older than me with adjusting to videotape and even basic word processing when
60 typewriters were going out of style. But I hit a plateau probably around the early to mid 2000s. I
61 was fine with those flip phones, but never got into those smartphones other than to call and text
62 (my grandchildren loved when I finally got used to texting). VHS tapes became a thing of the

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63 past, and security footage was stored digitally. Floppy disk drives disappeared from computers.
64 Even basic equipment changed - when we switched out our walkie-talkies for lapel mics, I
65 thought I was in some spy movie!

66 The hardest part about adjusting to technology, or really anything, is the pace of change,
67 especially in technology and adjusting to different levels of change across clients. Because
68 guards are not always stationed in the same place, we guards had to adjust to the security systems
69 adopted by each client. While the account managers worked with clients and gave
70 recommendations as to security systems, the final decision regarding technology the client had
71 on site was up to the client. Guards like me would do our usual patrolling and what not, but we
72 were also expected at times to monitor premises with the security systems (cameras, alarms, etc.)
73 that the client had in place.

74 Fortunately, most of the time, I was sent to the areas that had older security systems, the
75 ones I was more familiar with. It also helped that those clients liked me and a few even requested
76 that I be sent to their premises whenever available. However, there were times I was sent to
77 unfamiliar clients because of a special event or that client needed more than the usual amount of
78 security, such as major fight nights at a mixed martial arts arena called the Warehouse.

79 In fact, the rare blemishes on my record came from mistakes with complicated security
80 technology. There was one client, a nightclub called Millennium, that had a notoriously finicky
81 system called Artemis that managed security cameras and security footage storage. Well, in
82 2019, while trying to copy over some security footage, I accidentally deleted it. This was not the
83 first time this had happened; several guards (young and old) had done the same thing; the system
84 was not user friendly. The problem, however, was the footage I had deleted involved footage
85 where a club patron had been injured. I don't know the ins and outs of what exactly happened,
86 but my understanding is that the deleted footage would have shown the nightclub was not liable
87 for injuries to that patron - who of course sued!

88 Fortunately, the footage was eventually recovered, and the lawsuit dismissed. But the
89 recovery cost the client quite a bit of money (which Thunderbolt reimbursed). The client was not
90 happy and threatened to drop Thunderbolt, but the account manager was able to smooth things
91 over. I was nearly fired, but instead received a "Last Chance Agreement," requiring that I
92 improve my performance with technological systems or I would be fired. I thought that this was
93 unfair - I wasn't the first Thunderbolt employee to mess up copying over security footage with

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94 Artemis, but I was the scapegoat, particularly with this client. The client also demanded that I
95 never work at Millennium again - that was the only part of the ordeal I agreed with. All of my
96 other disciplinary actions were technology related, though usually minor (such as losing a key
97 card or forgetting to log out when leaving a worksite) and those were handled by minor write-ups
98 or verbal warnings. Unlike others, I was never accused of being late or slacking on the job! Like
99 everyone else, I hated it when receiving work discipline, but at the same time, everyone would
100 be written up for something sooner or later.

101 All of this continued until January 2021. Mr. Floyd had decided it was time to retire, and
102 handed the reins over to his grandchild, Lane Elliott (who insisted on being called Lane). I
103 actually remember Lane from years ago when Lane spent a summer working as a guard for
104 Thunderbolt - Lane was actually put under my wing. My understanding is that Lane went to
105 college and became a higher up in Flare Security Products, which sold security systems and
106 equipment. Lane wasn't intimately involved in the business until taking over, but I guess Mr.
107 Floyd wanted to keep the business in the family.

108 One of Lane's first orders of business in January 2021 was to let a bunch of the guards
109 go. During COVID, security guards like me were considered "essential employees," but business
110 tanked for those of us who were "frontline guards," or "boots on the ground," in other words the
111 ones who did the patrols and worked on site for clients as everything was shut down. We did
112 have a cybersecurity division - that started back in the late 1990s and grew quite a bit. The
113 cybersecurity division did quite well during the pandemic, with everything going online,
114 especially since they could work from home.

115 Us frontline guards? Well, Mr. Floyd kept us on and paid us through the bulk of the
116 pandemic. Mr. Floyd was loyal to those of us who had worked hard for him. Apparently, the new
117 boss had no such loyalty. One day we were called into a conference room with Riley Gallatin,
118 the new head of human resources, and given our walking papers. We were told it was "nothing
119 personal," just that Thunderbolt needed to go through a "right sizing" and that they "might hire
120 some guards again when the economy picks up." We were each offered a severance package,
121 with the amount depending on how long we worked there.

122 To receive the severance package, we had to sign a severance agreement that said we
123 would not sue Thunderbolt. Attached to that agreement was a sheet explaining the statistics of

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124 who was let go by age, including the criteria for the decision. I noticed a lot of gray hair in the
125 room when the layoff was announced, and the sheet matched that.

126 Knowing what I know now, I probably should not have accepted the severance and sued
127 Thunderbolt for age discrimination. But at the time, I had other things on my mind. My spouse
128 had been diagnosed with cancer in late 2020 and required a lot of care at home. My children
129 were too far away to come and help, and the only options were for us to hire someone to help
130 care for my spouse or for me to quit my job and help my spouse full-time. The layoff made the
131 decision for me. Fortunately, my spouse's job provided medical leave, so we still had that
132 paycheck.

133 Even though I spent most of my time after the layoff caring for my spouse, I found time
134 for other things. For one, I kept up with my fitness. My entire career as a security guard, I took
135 fitness very seriously. Even in my 50s, I was stronger and faster than a lot of guards in their 20s.

136 I also took some courses at Scarborough Community College. Like I said, in high school,
137 I never thought of myself as "college material." When I expressed interest in taking some
138 courses, my spouse encouraged me to do so. I couldn't be a full-time student, but I was able to
139 take a few classes each semester. I had heard that Thunderbolt actually sponsors a Security
140 Studies department which offers a couple of associate degree tracks, one in Physical Security,
141 and another in Cybersecurity. I thought it might be interesting to take a few courses.

142 My first semester, I took just one class, Introduction to Security Principles, which I
143 thought would be easy. After all, I had been a security guard for forty years! I barely got out of
144 there with a C! But that class taught me that even "easy" classes in college require work!

145 My second and third semesters, I took some basic computer courses and courses related
146 to technology and computer systems. Since technology was one of my weaker areas, I wanted to
147 challenge myself and improve in those areas. I was not the top of my class, but I was earning Bs
148 and B+s. I even got an A on a presentation I did on that stupid Artemis system in my Modern
149 Technology in Securities class. My instructor in that class was Max Casey, who I understand is
150 an expert witness for Thunderbolt.

151 The Community College also had a job recruitment webpage where one can see what
152 jobs are available as well as a physical bulletin board with the same thing. I never paid attention
153 to them until I came to campus to talk to Professor Casey about my final exam in December
154 2022. On the job bulletin board, I saw an ad from Thunderbolt looking for entry level security

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155 officers. Not cybersecurity, but the frontline guards like I had been! Fortunately, by that point,
156 my spouse had recovered enough to go back to work, and since I did not need to be at home, I
157 thought it would be nice to get back into the working world!

158 I do have to say applying for a job is different now than it was in the past! Everything is
159 online. Fortunately, the community college has a center that helps students, particularly older
160 ones, with navigating how to make a resume (Thunderbolt did not require one), and how to
161 create job profiles and apply online. I probably did not need assistance but sought out help from
162 the job center to make sure everything was done correctly. The job center also offered mock
163 interviews to help build interview skills, but I did not think that was needed. After applying, I
164 received an email to come in for an interview on January 4, 2023. I thought I was a shoo-in!
165 After all, this is an entry level position that I had worked for forty years.

166 When I arrived at Thunderbolt, a lot of it looked the same. I was given a quick tour by
167 Shawn Owsley, who had been the assistant head of human resources - and apparently still was.
168 The tour was unnecessary, but I wanted to say hello to all the people that I used to know. Shawn
169 told me that Thunderbolt was a different - and younger - place now.

170 After the tour, I was escorted to Riley Gallatin's office. I will admit, I wasn't entirely
171 happy or comfortable being interviewed by the person who gave me the layoff notice a couple
172 years earlier, but I tried to push those feelings aside. When I went in, I addressed Riley by the
173 appropriate honorific and last name but was told to address Riley as Riley. While looking at a
174 tablet that I think contained my application, Riley said, with a smile, "Mr. and Ms. were the time
175 of the old guard. We have joined the twenty-first century."

176 I was a bit surprised and said with a bit of edge in my voice that I had been part of the old
177 guard. Riley looked a bit puzzled, consulting the tablet, and said, "I see that you were." I tried to
178 ignore the comment; I thought at that point that the "old guard" and "twenty-first century"
179 remarks were intended to be humorous.

180 Riley went on to describe the position, including duties and hours. I smiled, thinking I
181 was being told things I already knew and said, "Yes, I did this for forty years!" Riley responded,
182 "Indeed, but things have changed a lot in those forty years." I laughed and said, "Don't I know
183 it! When I started it was all flashlights and walkie-talkies! Now it's maglites and earpieces!"
184 Riley responded, "And other things as well. Looking over your record, it appears your weakness
185 is technology. Would you agree with that?"

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186 I thought for a moment; it was true. When I said I agreed, Riley said, “I know you have
187 had problems with the Artemis system, but no one uses that now. But technology is continuing to
188 change. Can you adapt?” I told Riley that I would work to adapt as I always had and added that I
189 had taken some courses related to technology from the community college, handing Riley a
190 transcript.

191 Riley then asked me, “You said you had been doing this for forty years. Not only is the
192 technology different, but there are a lot of other changes. New management. New people. New
193 clients. Do you think you will be able to keep up?” I was surprised by being asked if I could
194 “keep up,” again I had never been known for slacking. I told Riley, “I am just here to do a job.
195 Whatever that entails, new clients, new management. All I am looking to do is get back to what I
196 was doing - being a guard.” Riley finished the interview by asking me, “What is your best case
197 for why we should hire you?” I said that I was trained and ready to do the job they were looking
198 for, with forty years’ experience. Riley thanked me and let me know that I would hear an answer
199 soon.

200 As I was leaving, I ran into Ashley Owen who said that she was applying for the job as
201 well. I had a few classes at the community college with Ashley. Nice kid, in her early 20s, who
202 had gone to community college right after high school with no other work experience. However,
203 her degree was in cybersecurity, not being a regular front-line guard. I wished her luck but didn’t
204 think she stood a chance. Not only was she applying for the wrong job (a cybersecurity job
205 would be more up her alley), but she also had no experience.

206 A couple of days later, I received an email from Thunderbolt thanking me for coming in
207 but telling me that I did not get the job. The email indicated that there were two candidates, but
208 they went with the stronger one. That confused me - that meant they preferred Ashley. But how?
209 I had had decades of experience, and all that experience being at Thunderbolt!

210 I received my answer the around the middle of March. I received a text from Shawn.
211 Shawn was quitting and wanted to let me know that in Shawn’s opinion, I didn’t get the job
212 because of my age. Shawn also mentioned overhearing Riley and Lane mention something about
213 me being an “old timer” as part of the reason they chose Ashley. I was shocked; Mr. Floyd
214 always valued the loyal employees and the experience they bring. I suppose those values did not
215 pass to the future generations. Shawn also advised me that I might want to contact the United
216 States Equal Employment Opportunity Commission (EEOC), which investigates discrimination

AFFIDAVIT OF ROBIN MCLEAN

217 claims and may file suit if they think there has been age discrimination. Shawn offered to give
218 me whatever help Shawn could give.

219 I made an EEOC complaint, and they did an investigation but decided not to file suit.
220 Instead, they gave me a “right to sue letter.” My lawyers told me that all this means is that the
221 EEOC decided not to file suit - it does not mean there wasn’t any age discrimination. And file
222 suit is what I did. Apparently, Thunderbolt’s lawyers do not want me to go to trial; they sent an
223 offer to settle the case to my lawyers without an admission of liability. I turned them down; they
224 need to admit what they did. And this apparently got back to Mr. Floyd; he sent me a nice
225 handwritten letter at the start of 2024 apologizing for the actions of his grandchild and stating
226 that he wished he had instilled better value in Lane. I don’t blame Mr. Floyd; I know he would
227 not have treated me - or anyone else this way.

228 I hate that it has come to this, and I especially hate it for Ashley Owen. Don’t get me
229 wrong; I don’t want her to lose a job and I don’t mean to diminish her accomplishments. I think
230 she deserves a good job, but her field is cybersecurity. When it comes to the job we applied for,
231 however, I am clearly the better candidate with decades of experience. I am certain my age is
232 why I did not get the job.

233 I am familiar with the following exhibits: Exhibit 1, the job posting for the position to
234 which I applied; Exhibit 3, the last chance agreement; Exhibit 4, text messages between Shawn
235 and me; Exhibit 5, the letter I received from Amos Floyd; Exhibit 6, the severance agreement
236 from the January 2021 reduction in force; Exhibit 7, the statistics from the reduction in force that
237 were attached to the severance agreement; Exhibit 9, my transcript from Scarborough
238 Community College; Exhibit 14, the Right to Sue Letter I received from the EEOC; and Exhibit
239 15, the settlement offer I received from Thunderbolt’s lawyers. I swear or affirm the truth of the
240 statements in this affidavit. Before signing this affidavit, I was told that it should contain
241 everything I know may be relevant to my testimony and I followed those instructions. I also
242 understand that I can and must update this affidavit if anything new occurs to me up to and until
243 the moment before opening statements in this case.

AFFIDAVIT OF ROBIN MCLEAN

/s Robin McLean
STATE OF KENTUCKY)
)
COUNTY OF CASTLEN)

SUBSCRIBED AND SWORN before me by Robin McLean this the 1st day of February, 2024

/s Patricia Trigg
Notary Public, Kentucky State at Large
My Commission Expires: 5/23/2028
Notary ID Number: 99999

AFFIDAVIT OF SHAWN OWSLEY

1 My name is Shawn Owsley. I am 52 years old, and until February 28, 2023, I was the
2 Assistant Human Resources Director for Thunderbolt Security, Inc. Amos Floyd, Thunderbolt's
3 founder, was a great person who valued his employees. He was charismatic, one of those bosses
4 to whom you wanted to give your loyalty. I always thought I would have retired at Thunderbolt.
5 I cannot say the same for Mr. Floyd's grandchild and successor Lane Elliott or for Lane's
6 minion, Riley Gallatin. The changes that they made to Thunderbolt, particularly with the ageism
7 I saw, and the preference for younger employees, and even their treatment of me, led me to seek
8 employment elsewhere. Hiring the fresh community college graduate over someone experienced
9 like Robin McLean was the final straw.

10 I started at Thunderbolt in 1995, right after I graduated from college here in Kentucky
11 with a degree in Business Administration. After I applied, I was interviewed by Mr. Floyd
12 himself. Mr. Floyd liked to do interviews and directly hire people himself in those days. That
13 continued until the mid to late 2010s when Thunderbolt was getting just too big for that, and Mr.
14 Floyd's health began to decline. I remember when Mr. Floyd offered me the job, he told me, "If
15 you are loyal to Thunderbolt, I guarantee Thunderbolt will be loyal to you."

16 Mr. Floyd kept that promise. While there were people fired or disciplined, it was always
17 with cause (though I will say I did not agree with every decision). However, Mr. Floyd never laid
18 anyone off if times were tough, and even put his own money in at times to make payroll. In turn,
19 most people did their best for Thunderbolt, and did not leave for "greener pastures" - which is
20 unusual for a security company because there is usually a lot of turnover for guards.

21 One of those lean times was the COVID-19 pandemic, the leanest time in Thunderbolt's
22 history as far as I know. With businesses closed and events not happening, there was a reduced
23 need for "frontline" security guards, or the ones physically present. Of course, some facilities
24 like hospitals needed guards, but we had to cut our rates to keep up with competition. But very
25 few of the frontline guards were working full time during the pandemic, though Mr. Floyd made
26 sure everyone was paid a full-time wage. Only our cybersecurity division (which expanded
27 during the pandemic) and Mr. Floyd putting his own money into making sure payroll was met
28 made sure no one was laid off. Thunderbolt came out of the pandemic by a thin margin, and I
29 think the stress involved contributed to Mr. Floyd's decision to step down.

30 I had hoped that Mr. Floyd would hand the reins to someone who was already at
31 Thunderbolt, but that was not to be. When Mr. Floyd started his decline in the 2010s, he started

AFFIDAVIT OF SHAWN OWSLEY

32 preparing a former guard and account manager named Celia Knox to take over, but she left in
33 2018 to take a job overseas. Mr. Floyd couldn't fault her for taking that opportunity. Towards
34 middle to late 2019, Mr. Floyd's health was getting to the point where he simply had to find
35 someone to take over. That person was his grandchild, Lane Elliott.

36 Lane (who insisted on being called Lane) was a sales manager for Flare Security
37 Products, Inc., a firm that supplied security equipment and security systems for us as well as our
38 clients. That wasn't Lane's only connection with Thunderbolt; I recall that Lane had worked for
39 Thunderbolt as a part-time guard during the summer while in college. But instead of coming to
40 Thunderbolt after graduation, Mr. Floyd wanted Lane to chart Lane's own path.

41 I actually had some contact with Lane as assistant human resources director. Thunderbolt
42 had about 250 employees in 2019, and while many may not think that makes it a "small"
43 company, it was small enough that my human resources duties also included making sure that
44 our frontline guards were fully equipped, the bills for that equipment was paid, and arranging
45 space for Flare product demonstrations. Mr. Floyd left the decisions as to what equipment
46 purchased and client recommendations regarding security systems to a group of senior account
47 managers as Mr. Floyd wanted to avoid a "conflict of interest" since his grandchild sold those
48 products.

49 I sat in on a lot of those product demonstrations and discussions after. Many of the
50 younger guards would be fascinated by Lane's recommendations, but the senior account
51 managers would take a more critical eye. They would not snap up the newest product just
52 because it was new and shiny. Mr. Floyd never countmanded the senior account managers. I
53 heard from one of them that Lane made some comment about not liking how "the stubborn old
54 people" were blocking progress, but I never heard anything like that myself. I wouldn't doubt it
55 if Lane said such things.

56 Lane had been living in Midlands but moved to Scarborough to start shadowing Mr.
57 Floyd in 2020 - right around the time everything shut down. I remember helping Mr. Floyd set
58 up Zoom in the summer of 2020 so that he and Lane could have Zoom meetings. After I got
59 Zoom set up on Mr. Floyd's computer, Lane initiated a call. Mr. Floyd had me sit down on the
60 other side of his desk. I was not on camera, nor could I see the screen. I remember Mr. Floyd
61 said, "Hi Lane! See, an old dog can learn new tricks!" Lane responded, "I can see that Old
62 Timer! Glad to see you in the twenty-first century! Can you get your account managers to do the

AFFIDAVIT OF SHAWN OWSLEY

63 same with Flare products?” (“Old Timer” was Mr. Floyd’s family nickname). Mr. Floyd laughed
64 and responded, “That’ll be your job! You know all about this modern technology!” Lane
65 responded, “Well, they’ll need to adapt or else they’ll be sent to the glue factory.” I could not see
66 Lane’s face, but from the tone of Lane’s voice, Lane was not joking. Mr. Floyd motioned me to
67 leave the office, so I did, closing the door behind me. I did not hear the rest of the call.

68 Mr. Floyd’s last date with Thunderbolt was December 31, 2020. Mr. Floyd made it very
69 clear that Thunderbolt now belonged to Lane and Mr. Floyd would not interfere. Mr. Floyd was
70 not the only one who retired; so did the senior account managers who were involved in product
71 decisions. I think they thought they were going to be fired anyway. One told me on the way out
72 that he didn’t want to “serve under that undeserving whipper-snapper.” The director of human
73 resources, my direct report, retired that day as well. She did not want to be under the new regime.
74 I know she and Mr. Floyd recommended me as the new director of human resources.

75 That was not to be. On January 2, 2021, Lane introduced me to Riley Gallatin, who
76 would be the new director of human resources. Apparently, Riley had gone to college with Lane,
77 and had been in human resources at Flare, though not any sort of manager, assistant or otherwise.
78 Lane told me, “I know you probably thought you would be the new director, but I wanted
79 someone who would help me make some tough decisions in the future. Someone who is not a
80 part of the “old guard.”

81 I asked what was meant by “old guard,” and I was told that it meant the senior account
82 managers who made product decisions; the ones who had just retired. Riley told me, “I hope we
83 can work together. Lane and I will need your expertise making some tough decisions with “right
84 sizing.” “Right sizing” is corporate-speak for a bunch of people being laid off. I was aghast as
85 this was against everything Mr. Floyd - and Thunderbolt - stood for! I told Lane and Riley as
86 much. Lane explained that Thunderbolt’s finances were in a precarious state after the pandemic,
87 and Thunderbolt simply couldn’t afford to keep “dead weight” around waiting for the economy
88 to pick back up.

89 I probably should have left at that time, but I have a family to feed. With a pit in my
90 stomach, I helped with what I called “the culling.” Of the 250 Thunderbolt employees at that
91 point, 150 were “frontline” guards. About 60 others were cybersecurity, and the remaining were
92 support staff and account managers.

AFFIDAVIT OF SHAWN OWSLEY

93 At first, it appeared that Lane and Riley wanted my assistance in making decisions, but I
94 think they could tell that I was sick about the whole thing. Soon, they only asked me for
95 clarification on certain employees. Lane and Riley wanted to look at employee skills,
96 disciplinary records, and reports from account managers on particular guards.

97 One of those employees Lane and Riley asked for clarification about was Robin McLean.
98 That one stuck out because of the “last chance agreement” that had been issued to Robin after
99 Robin accidentally deleted some footage with that stupid Artemis system which was notoriously
100 hard to use. I told Lane and Riley that I had only wanted to issue a written reprimand, but
101 because the client was very angry, I was overruled and had to issue the last chance agreement. I
102 also told them that Robin had actually turned down offers for promotion to account manager in
103 the past and enjoyed being a security guard and seemed to be liked by most clients. Lane and
104 Riley shook their heads and I recall Lane saying, “Oh definitely not tech savvy.” Riley replied,
105 “Yeah, a real liability risk.”

106 During the culling, I recall that those two used the term “tech savvy” a lot, particularly
107 directed at older employees. It is true that it was mostly the older employees that had disciplinary
108 actions for poor understanding or unintentional misuse of technology, but younger employees
109 were not immune. Younger employees who were disciplined regarding technology had
110 committed more intentional offenses, e.g., recording themselves doing TikTok dances while on
111 duty and on site with a client.

112 In the end, about 100 guards were let go. Most were over 40, though all of them had at
113 least some disciplinary action on their records, if not something minor. Mr. Floyd was strict
114 about discipline but tempered it with mercy. I helped Riley prepare a summary of the guards who
115 were let go, noting whether the guards were over forty or under forty and whether they had
116 minor discipline or major discipline (intentional misuse of technology was considered major
117 discipline). A summary like that is required by law when doing a layoff and given to those let go.
118 Exhibit 7 is a correct copy of that summary. A few support staff and one or two account
119 managers were also let go.

120 The day everyone was let go, I couldn’t bring myself to be in the room while Riley
121 announced the layoffs. I am ashamed that I couldn’t face all those loyal Thunderbolt employees.
122 At least they were offered severance and I was instructed to give good reviews to any employer
123 who called, regardless of their disciplinary record.

AFFIDAVIT OF SHAWN OWSLEY

124 Once summer 2021 came around and businesses started opening back up and events were
125 being scheduled, we started hiring front-line guards again. Before Robin McLean applied again,
126 we had hired 100 guards. After receiving applications, we would interview candidates and hire in
127 batches of ten. All the candidates were interviewed by Riley and after interviews, Lane and Riley
128 would discuss the candidates to determine who they would hire. I was not part of those
129 discussions. Instead, my job was to assemble the applications and other materials such as
130 references or transcripts for Riley in preparation for interviews and process paperwork for the
131 guards hired.

132 In 2021, Lane and Flare Security Products also increased their support for the Security
133 Studies Department at Scarborough Community College. Years ago, Lane convinced Mr. Floyd
134 to invest in courses and security management at the community college. Mr. Floyd agreed,
135 thinking it would be a good way to support the community college and Scarborough by
136 extension. Personally, I think it was a way for Lane to advertise Flare's products and put indirect
137 pressure on the senior account managers to adopt more of Flare's products, but perhaps I am
138 being cynical. I will say it gave us a pool of locally trained candidates.

139 I mention the community college because Lane and Riley placed high value on guards
140 who had taken at least some of the classes at the community college - even over years of
141 experience. I thought that was a mistake, but of course Lane and Riley ignored my concerns. In
142 fact, when I expressed those concerns to Riley, Riley responded, "Lane wants Thunderbolt to be
143 the premier tech savvy security company. Tech knowledge is more important than experience in
144 this field. We need people who are able to adapt to all the advances in technology, not someone
145 who can barely operate a flip phone."

146 I did not keep statistics myself regarding the ages of who was hired, but I could tell that
147 there were a lot more younger employees hired than older. At the same time, we did have times
148 where we didn't have anyone forty or over to apply. I have seen the summary of hiring statistics
149 prepared by the Employment Equal Opportunity Commission, Exhibit 8 and I have no reason to
150 dispute that summary. The result was that Thunderbolt was getting younger and younger. Every
151 now and then, I would hear mention of the "new guard" being hired as opposed to the "old
152 guard" who had either retired or were let go, but I never heard Lane nor Riley expressly say that
153 they did not want older guards, but I had that impression. Riley also gave me a birthday card on
154 my 50th birthday that said, "over the hill" and "old timer" on it. I thought it was funny at the

AFFIDAVIT OF SHAWN OWSLEY

155 time (my spouse is a few years older than me, and I got a similar card for my spouse's 50th
156 birthday), but looking back, that language seems to fit with Lane and Riley's attitude towards
157 older employees. That birthday card is an exhibit in this case, Exhibit 16.

158 Furthermore, the job postings gave me the impression that Thunderbolt preferred younger
159 employees. Thunderbolt did not produce its own job postings; that was outsourced to an
160 advertising agency. All we did was give them the language we wanted to use, and the advertising
161 agency did the rest. The advertising agency would even add some stock photos. The proof would
162 come in and Lane and Riley would have final approval. I told Riley that I was concerned that the
163 language in the job posting, and especially the images, make it seem like the posting was
164 directed at younger candidates. Riley ignored my concerns.

165 I remember seeing Robin's job application when Robin applied. We were looking for
166 only one candidate at that time rather than our usual ten, and we only had two applicants. I know
167 that Robin had some issues with technology in the past, but I was impressed that Robin had taken
168 some community college classes after being laid off. The other candidate, Ashley Owen, had
169 recently received an associates degree in Security Studies, but had gone down the cybersecurity
170 track. I had no idea why she would apply from a front-line guard job. Maybe it was to get her
171 foot in the door? I don't know.

172 Both Robin and Ashley were called in for interviews. Robin was first. I gave Robin the
173 usual tour, even though Robin did not need it. Robin was happy to catch up with people that
174 were still at Thunderbolt from before the culling - the few that remained anyway. I did warn
175 Robin in advance that Thunderbolt was different now, a lot younger. I just wanted Robin not to
176 expect that everything would be like how it was when Mr. Floyd was in charge.

177 While Riley was interviewing Robin, I gave Ashley her tour. Ashley loved our
178 cybersecurity area. I attempted to make small talk, and asked Ashley if she had ever been a
179 guard. She said no, that her only experience with security guards was going to events, but she
180 was impressed with Thunderbolt. During our conversation, I found out that she had been at the
181 Warehouse (a local mixed martial arts arena) the night a young man was killed, and that she was
182 impressed by the professionalism of the guards. That led to her interest in working specifically at
183 Thunderbolt.

184 I was not present for the interviews. Lane and Riley spoke about the candidates later, but,
185 like always, I was not invited to the discussion. However, I happened to be outside Riley's door

AFFIDAVIT OF SHAWN OWSLEY

186 for the discussion regarding Robin and Ashley. I was bringing Riley some insurance paperwork,
187 and the door was open. I admit I was eavesdropping, but I couldn't help myself especially when I
188 heard Riley say, "I like Owen better than the old timer." I was stunned to hear "old timer" used
189 that way. Again, I know that was the family nickname for Mr. Floyd, but I never heard that term
190 for a job candidate. Lane responded, "Yeah, if you can't handle technology, you don't have a
191 place in security anymore. And Owen is much more tech savvy. And more versatile. I agree with
192 you that she made a good point about physical security and cybersecurity merging over time."

193 For some reason, I sneezed after that comment. Riley came to the door and saw me,
194 frowned, and shut the door so I couldn't hear any more of the conversation. Later that day, Riley
195 told me that Ashley Owen was chosen, and I needed to send emails to both with the decision. I
196 did so, and started my job search the next day. If Lane and Riley were willing to ignore forty
197 years of experience from someone who actually turned down promotions in the past for someone
198 who wasn't even a fit for the job advertised, then it was time for me to go. Don't get me wrong, I
199 had nothing personal against Ashley. She would have been great for a cybersecurity position. But
200 what was being advertised was a front-line guard.

201 I started my job search, not saying anything to Lane or Riley. I soon received a job offer
202 as head of human resources at Huffaker Foods (a food distribution company) across town and
203 left at the end of February. When I informed Riley that I was leaving, Riley said it was a shame
204 to lose me and my experience. I responded, "Experience doesn't seem wanted around here."
205 When Riley asked what I meant by that, I said, "We old timers don't have a place here
206 anymore." I emphasized the term "old timer" when saying that. I didn't let Riley respond before
207 I walked out.

208 After I started my new job, I texted Robin to explain what I had heard while Riley and
209 Lane were discussing the candidates. Exhibit 4 is an accurate screenshot of our conversation.
210 Robin then made an Equal Employment Opportunity Commission complaint. The EEOC
211 requested to talk to me, and I gladly told them everything that I have mentioned in this affidavit.

212 Thunderbolt seems to be doing well financially right now, I do have to give Lane Elliott
213 credit for that. And ironically, Lane's actions and Riley's actions actually pushed me to find a
214 better job. I am paid 15% more at Huffaker Foods than I was at Thunderbolt. However, Lane
215 Elliott and Riley Gallatin can't continue their age discrimination. Amos Floyd would never have
216 never treated people like Lane and Riley have. There are times I truly wish Thunderbolt had

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217 closed its doors when Mr. Floyd retired. At least I can honor his legacy by helping stop this
218 horrible age discrimination that is tarnishing the wonderful company he founded.

219 I am familiar with the following exhibits: Exhibit 1, the job posting that Robin McLean
220 answered; Exhibit 3, Robin McLean's Last Chance Agreement; Exhibit 4, the text messages
221 between Robin McLean and me; Exhibit 6, Robin McLean's severance agreement following the
222 2021 reduction in force; Exhibit 7; the reduction in force statistics attached with the severance
223 agreement; Exhibit 8, the EEOC statistics regarding hiring security officers following the
224 reduction in force; Exhibit 9, Robin McLean's transcript from Scarborough Community College;
225 Exhibit 10, Ashley Owen's transcript from Scarborough Community College; and Exhibit 16, the
226 birthday card I received from Riley Gallatin. I swear or affirm the truth of the statements in this
227 affidavit. Before signing this affidavit, I was told that it should contain everything I know may be
228 relevant to my testimony and I followed those instructions. I also understand that I can and must
229 update this affidavit if anything new occurs to me up to and until the moment before opening
230 statements in this case.

/s Shawn Owsley
STATE OF KENTUCKY)
)
COUNTY OF CASTLEN)

SUBSCRIBED AND SWORN before me by Shawn Owsley this the 1st day of February, 2024

/s Patricia Trigg _____
Notary Public, Kentucky State at Large
My Commission Expires: 5/23/2028
Notary ID Number: 99999

AFFIDAVIT OF COREY SPENCER

1 My name is Corey Spencer, and I am an Associate Professor of Law at Midlands State
2 University College of Law. I have held that position since August 2019. I am a 2007 graduate of
3 the Midlands State University College of Law and worked for two years as an associate attorney
4 at Webb & Skaggs, representing employers in various labor and employment cases. In 2009, I
5 was hired by the Equal Employment Opportunity Commission, which is a Federal agency that
6 administers and enforces Federal civil rights laws regarding workplace discrimination. In that
7 capacity, I would investigate claims of workplace discrimination (age, sex, ethnicity, national
8 origin, religion, etc.), to determine if there had been a violation of the law. If there was, then the
9 EEOC would try to mediate the claim to determine if there was a workable resolution for all
10 parties. If that fails, then the EEOC may initiate litigation on behalf of claimants or issue them a
11 “Right to Sue” letter, which means that the EEOC declined to sue on the claimant’s behalf. That
12 is exactly how this came to court. Robin McLean initiated a complaint with the EEOC, the
13 EEOC did an investigation, and issued McLean a “Right to Sue” letter rather than file a lawsuit
14 on McLean’s behalf.

15 While the work experience at the EEOC was wonderful, the workload was rather intense.
16 There were always too many cases, and not enough time or money to help everyone. I recall one
17 of my supervisors telling me to “make peace” with the fact that I couldn’t help every claimant. I
18 stuck it out for about seven years, until my professor for my Employment Discrimination class
19 told me that she was retiring and would recommend me for a professorship at my alma mater. I
20 jumped at that in a heartbeat. Although I was not the traditional Ivy League graduate they
21 normally recruit as a professor, the College of Law liked that I had practical experience. I teach
22 classes in Labor Law, Employment Law, Employment Discrimination, and seminar courses
23 regarding labor and employment law. I also teach first year Civil Procedure.

24 In addition to my teaching responsibilities, I write and publish articles in my area of
25 expertise; that is employment law. I also have presented at continuing legal education sessions
26 and seminars for labor and employment law. As such, that requires me to keep abreast of
27 changes in the law at the state and federal level.

28 I also offer my services as an expert to plaintiffs in discrimination cases, particularly age
29 discrimination as that is a particular academic interest of mine. Most of the time, I am a
30 consulting expert; by that I mean I am only hired to help evaluate a case for plaintiff counsel to
31 determine if there is sufficient evidence to file suit. This is only the second time I have been

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32 called to testify at trial. The previous case resulted in a verdict for the defendant. I am charging
33 \$500.00 per hour for my review of this case and my time testifying at trial. I am also being
34 compensated for my travel expenses to Kentucky.

35 I have been hired to evaluate and testify regarding indicia of discrimination, and how
36 they may be present in this case. Indicia of discrimination are important because it is very rare
37 that an employer will directly say that they are not hiring a candidate because they are a member
38 of a protected class; almost all cases are proved by circumstantial evidence (in other words by
39 inference). And by “protected class,” I mean a group of people with a common characteristic
40 who are legally protected from employment discrimination by law. I am not licensed to practice
41 law in Kentucky; however, I am familiar with the Kentucky Civil Rights Act (the law under
42 which this case is proceeding) and its similarities to the Federal Civil Rights Act of 1964. Under
43 both statutes, those who are age forty and over are considered a protected class.

44 In coming to my opinions, I have examined the following: (1) affidavits of Robin
45 McLean, Shawn Owsley, Lane Elliott, and Riley Gallatin and (2) the following exhibits - Exhibit
46 1, the job posting that Robin McLean answered; Exhibit 2, the revised job posting that
47 Thunderbolt used following the EEOC investigation; Exhibit 6, Robin McLean’s severance
48 agreement; Exhibit 7, the statistics regarding the reduction in force at Thunderbolt in January
49 2021; Exhibit 8, the statistics regarding hiring at Thunderbolt following the reduction in
50 force; Exhibit 14, the Right to Sue letter issued to Robin McLean; and Exhibit 16, the birthday
51 card Riley Gallatin gave Shawn Owsley on Owsley’s 50th birthday. All these materials were
52 provided to me by Robin McLean’s attorneys. I did not ask defense counsel to provide me with
53 any materials, nor did I perform any interviews; I certainly would not expect defense counsel to
54 allow me to interview any defense witnesses anyway. While these materials are not as extensive
55 as what would be available in an EEOC investigation, they were nevertheless sufficient for me to
56 come to my conclusions. Based upon my review, I believe there are clear indicia of age
57 discrimination in Thunderbolt Security, Inc’s decision not to hire Robin McLean.

58 The reason why age discrimination is so fascinating to me is how insidious and
59 widespread it is. In 2021, 21% of all EEOC charges alleged age discrimination. Statistics have
60 shown that while older adults tend to be brought in for interviews at the same rate as younger
61 candidates, those older candidates are offered jobs 40% less frequently than younger candidates
62 with similar skills. 47% of workers over the age of forty claim to have experienced ageism or age

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63 discrimination in the workplace. 52% of older workers believe their age would negatively affect
64 their job searches.

65 The reason why older workers are offered jobs less often than younger workers is that
66 stubborn preconceptions about older workers continue to exist. These include (1) that older
67 workers are resistant to change; (2) older workers have less ability to learn new skills than
68 younger workers; (3) older workers may not stay around as long due to their age; and (4) older
69 workers are more costly, in terms of pay and use of benefits like health insurance. The
70 persistence of these preconceptions is not mere speculation. For example, a 2019 survey among
71 296 employers by ZipRecruiter found that 45% of employers have concerns that older workers
72 lack necessary technology-related skills for jobs. 47% of those 296 stated that technological
73 skills are very important or extremely important. In that same survey, a full quarter of all
74 employers also admitted that they would choose a 30-year-old candidate over a 60-year-old
75 candidate if both candidates possessed equal skills. This is in spite of the fact that 84% of all
76 employers also believe that older workers can still do the job of younger workers.

77 Many people, even older workers, hold these beliefs. In part, because of that, age
78 discrimination can be harder to detect than discrimination based on ethnicity or gender.

79 I have identified four primary areas of concern that are indicative of age discrimination or
80 discriminatory intent. (1) words and phrases in the job posting itself that are “age coded” or
81 language that would have an effect of discouraging older candidates from applying or indicate a
82 preference for younger candidates; (2) questions and responses during the interview process that
83 indicate a dismissive and discriminatory attitude toward older candidates; (3) general statements
84 and actions by decisionmakers at Thunderbolt indicative of animus (i.e. hostility) to older
85 workers; and (4) statistics regarding a reduction in force as well as hiring statistics that indicate a
86 preference for younger candidates.

87 I will begin with the coded language in the job posting. As I described above, by “age-
88 coded,” I mean language that would have an effect of discouraging older candidates from
89 applying for a position or would indicate a preference for younger candidates. This is different
90 from explicitly ageist language that indicates animus towards older workers. For example, “No
91 candidates over 40 will be considered” is explicit. Age-coded language carries the same message
92 but is instead couched in more facially neutral terms. Something probably less obvious or less
93 explicit in a job posting is that the employer states that the employer is looking for “recent

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94 graduates.” While the phrase “recent graduates” does not explicitly say “no candidate over 40
95 will be considered,” the phrase does implicitly connote a preference for younger job seekers.
96 After all, most “recent graduates,” though not all, are likely to be in their early 20s. The EEOC
97 has issued enforcement guidance in the past that advises employers that coded language may
98 give rise to the level of actionable discrimination. Enforcement guidance is not law, but merely
99 clarifies the EEOC’s position regarding how it interprets the law and previews the EEOC’s
100 position should a case be filed in court.

101 Other coded languages can include words and phrases such as “high energy level,”
102 “dynamic,” or “fresh blood.” Those phrases are often used as euphemisms for “young.”
103 Technologically specific terms such as “digital native” or “tech savvy” can imply a preference
104 for younger workers who grew up with technology. Again, such phrases are innocuous and are
105 not in and of themselves directly saying an employer would automatically hire a younger worker
106 over an older worker. However, these phrases can imply that the preference is for younger
107 employees and discourage older candidates from applying. This is not to say that every employer
108 who uses those phrases are signaling such a preference, but it should certainly raise the
109 possibility.

110 What is known, however, is the effect such language has on older workers seeing such
111 language in job postings. A 2022 working paper from the National Bureau of Economic
112 Research found that such language deters older candidates from applying from positions. The
113 conclusion from that working paper was that such a deterrent can have roughly as much of an
114 impact on hiring older workers as direct age discrimination.

115 In Exhibit 1, the job posting to which Robin McLean applied, several instances of this
116 coded language are present. For example, the opening paragraph uses the phrases “tech savvy”
117 and “fresh blood.” Again, these are phrases which are known coded language for age
118 discrimination. Moreover, the phrase “beginning a career” connotes that the position is intended
119 for a candidate at the start of their working life, rather than someone who may be a lateral
120 applicant. In addition, the phrase “able to adapt to different technology systems” can connote that
121 Thunderbolt is looking for younger employees, but I do understand that the position advertised
122 for is one where the successful candidate will be sent to different locations and will need to
123 operate different equipment based upon what systems the client has installed.

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124 I do understand that Thunderbolt did not create the actual job posting itself. Instead,
125 Thunderbolt used an advertising agency to create and format the posting. However, Thunderbolt,
126 specifically Lane Elliott and Riley Gallatin, were responsible for the language used in the job
127 posting, particularly the language regarding the type of candidate sought as well as the job
128 requirements. They chose the language, but there is no way to see in their minds to see if they
129 intended animus towards older workers in using such language. Use of coded language is
130 indicative, not dispositive. However, it is significant that Thunderbolt agreed to remove that type
131 of language from future job postings after the EEOC investigation. This is reflected in Exhibit 2.

132 In addition to language, I had concerns with the images of guards in the job posting.
133 Many times, images in job postings may include the employer's logo and other images used to
134 highlight the position and the position's responsibilities. For example, a job posting for a
135 restaurant server may include an image of a server taking a customer's order. In this job posting,
136 there are three images of security guards at work. All three of them seem to show guards who are
137 under forty. I understand the advertising agency chose the images in the job posting, subject to
138 Thunderbolt's final approval. Again, however, I find it significant that Thunderbolt decided to
139 use different images following the EEOC investigation.

140 Next, I want to turn to Riley Gallatin's interview with Robin McLean. Both agree that
141 Gallatin referred to McLean as being part of the "old guard." The term "old guard" raises a red
142 flag. As defined by the Cambridge Dictionary, "old guard" means "those people in an
143 organization or society who oppose change and whose beliefs and ideas belong to a period in the
144 past." Of course, context is important as language is fluid. Others have used "old guard" to mean
145 just those members of an organization who were present prior to a change without any reference
146 to stubborn, outdated beliefs. Therefore, the term must be examined in context with other
147 statements.

148 Likewise, Gallatin's question to McLean about McClean having worked as a guard for
149 forty years and asking if McClean could "keep up" also raises red flags. The phrase "keep up"
150 when asked to someone McLean's age connotes an ageist stereotype, i.e., someone who is old
151 and frail. I do note that Gallatin denies using the phrase "keep up," but instead claims to have
152 asked a more neutral question about whether McLean would be able to adjust to very recent
153 changes since McLean's last employment at Thunderbolt.

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154 Also raising a red flag is Gallatin’s question about whether McLean could adjust to
155 changing technology. Again, that question connotes an ageist stereotype of an older person who
156 cannot adjust to technological changes. Even if a stereotype might have some basis in fact, a
157 decisionmaker must look at the qualifications of an individual rather than just rely on a
158 stereotype. Indeed, the whole purpose of federal and state employment anti-discrimination laws
159 was to *prevent* protected class employees from being treated differently because of stereotypes. I
160 will admit, however, that Gallatin’s question about adapting to changing technology appears to
161 be premised upon McLean’s admitted weakness regarding technology in the past rather than a
162 general stereotype.

163 Finally, though not directly part of the interview, Shawn Owsley reported Gallatin
164 referred to McLean as an “old timer” when discussing the candidates with Lane Elliott. Of
165 course, the term “old timer” is a euphemism for someone elderly (think of the elderly blind
166 prophet operating the railroad handcar in the movie *O Brother Where Art Thou*, and George
167 Clooney’s character asks, “Mind if we join you, Old Timer?”) I acknowledge that Gallatin denies
168 referring to McLean as “Old Timer,” and claims instead that the term was used in reference to
169 Amos Floyd, the previous owner of Thunderbolt whose family nickname was “Old Timer.”

170 Third, I noticed from review of the affidavits general statements by Thunderbolt’s
171 employment decisionmakers that are indicative of animus towards older workers. While these
172 terms were not uttered to Robin McLean nor were directed at McLean, such phrases can indicate
173 a belief in stereotypes about older workers, particularly when uttered by decisionmakers. For
174 example, Shawn Owsley claims that when expressing concerns to Riley Gallatin about favoring
175 security officer candidates who had some community college education over candidates with
176 years of practical experience, Gallatin responded that Thunderbolt needed “people who are able
177 to adapt to all the advances in technology, not someone who can barely operate a flip phone.” In
178 addition, before Lane Elliott assumed control of Thunderbolt, Gallatin claims Elliott expressed
179 concerns that “senior members” were “slow or resistant to accept new products” and further
180 expressed concerns that senior members “wanted to remain in the time of the dinosaurs.” Those
181 statements were made in reference to Elliott’s attempts to sell products to Thunderbolt while
182 Elliott was a sales rep at Flare Security Products and well before Elliott had any expectation of
183 taking over Thunderbolt.

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184 Finally, I have concerns about a birthday card Gallatin gave Owsley for Owsley's 50th
185 birthday. That card used the phrases "over the hill" and "old timer," derogatory phrases for an
186 older person. I will agree the card is designed to be humorous and it is not unusual to give such a
187 card to someone on a milestone birthday. However, it is possibly indicative of Gallatin's attitude
188 towards older persons.

189 In evaluating these phrases, it is important to look at the context of these statements, their
190 frequency, and when they were uttered. A stray remark about age on occasion is not definitive
191 proof of animus. Likewise, an ageist remark when used with someone who does not take offense
192 to that remark or an ageist remark, especially if such remarks are far removed from any
193 actionable decision is not definitive proof of animus. However, a pattern of ageist remarks or
194 ageist remarks close in time to an actionable decision may be indeed indicative of animus.

195 Fourth, I examined employment statistics regarding Thunderbolt's reduction in force in
196 2021 (Exhibit 7) as well as statistics relating to guards hired following the reduction in force
197 prior to Robin McLean's application (Exhibit 8). The reason why we look at such statistics is
198 because discriminatory animus can be inferred from statistics regarding rates of firing, hiring,
199 promotions, etc. by comparing the protected class against non-protected classes. The analysis can
200 indicate a common practice among an employer relating to a protected class, and thus can shed
201 light on how an employer may have treated a particular member of that protected class.
202 However, it is important to note that statistical evidence is only inferential - it is an indicator that
203 an employer took a particular job action, but it is not dispositive of discriminatory animus. Such
204 evidence must be examined in context with other evidence.

205 First, I looked at statistics regarding the reduction in force in 2021. These statistics were
206 provided to Robin McLean and to everyone else laid off in the reduction in force. When an
207 employer does such a reduction in force, they are required to provide statistics like this to
208 employees. At the time of the reduction in force, Thunderbolt employed 150 guards. The
209 protected class in this case is age 40 and over. Of those 150, 100 of them were members of the
210 protected class (67%), leaving 50 who were not of the protected class (33%). One hundred
211 guards were let go, and of those, 75 were in the protected class (75%) and 25 were in the non-
212 protected class (25%). Of the remaining 50 guards, half were of the protected class, and half
213 were not.

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214 Of course, it must be recognized that other factors can be at play. Of the 100 guards who
215 were let go, all of them had some form of discipline on their record. I have not examined the
216 records from all 150 guards; indeed, Robin McLean's lawyers sought that information from
217 Thunderbolt, and Thunderbolt refused to provide it. I am left to interpret the information I have.

218 Of the guards let go, 25 of the 75 in the protected class had at least one incident of major
219 discipline. "Major discipline" as defined by the statistics provided to the employees let go, means
220 a last-chance agreement, a demotion, or suspensions from work of five days or more. The other
221 50 had five instances or more of minor, defined as written reprimands or suspensions from work
222 for less than five days. All the guards in the non-protected class had at least one incident of
223 major discipline. While this may seem disproportionate at first, I will acknowledge the guards in
224 the protected class had likely been with the company for far longer and had received discipline
225 more often.

226 After the reduction in force, Thunderbolt hired 100 guards in groups of ten. The EEOC
227 summarized the statistics regarding the numbers of protected and non-protected candidates hired.
228 Robin McLean's lawyers were able to obtain that summary and provide that to me but were not
229 able to obtain the raw data. Of the 100 guards hired after the reduction of force, only 25 were of
230 the protected class. 75 were of the non-protected class. This is the exact opposite of the numbers
231 of protected and non-protected employees let go in the reduction of force. Drilling down a bit
232 further, in six of those ten groups of hires, there were no candidates of the protected class. I
233 understand that the position advertised called for "entry level" candidates which usually attracts
234 younger candidates. However, as mentioned earlier, studies show that coded ageist language also
235 discourages job candidates, though there is no way to know how many potential candidates were
236 discouraged from applying.

237 While I am not allowed to state a conclusion as to whether Thunderbolt did not hire
238 Robin McLean because of McLean's age, I certainly believe there is sufficient indicia leading to
239 that conclusion. It is easy to understand why there was an EEOC investigation into Thunderbolt,
240 and it appears that Thunderbolt has recognized that some of its practices gave the impression that
241 it preferred younger candidates. This case will make an interesting case study for my
242 Discrimination Law seminar class in fall 2025.

243 I am familiar with the following exhibits: Exhibit 1, the job posting that Robin McLean
244 answered; Exhibit 2, the revised job posting that Thunderbolt used following the EEOC

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245 investigation; Exhibit 6, Robin McLean's severance agreement; Exhibit 7, the statistics regarding
246 the reduction in force at Thunderbolt in January 2021; Exhibit 8, the statistics regarding hiring at
247 Thunderbolt following the reduction in force; and Exhibit 14, the Right to Sue letter issued to
248 Robin McLean, Exhibit 12, my curriculum vitae; and Exhibit 16, the birthday card given to
249 Shawn Owsley from Riley Gallatin. I swear or affirm the truth of the statements in this affidavit.
250 Before signing this affidavit, I was told that it should contain everything I know may be relevant
251 to my testimony and I followed those instructions. I also understand that I can and must update
252 this affidavit if anything new occurs to me up to and until the moment before opening statements
253 in this case.

/s Corey Spencer
STATE OF MIDLANDS)
)
COUNTY OF JONES)

SUBSCRIBED AND SWORN before me by Corey Spencer this the 1st day of May, 2024

/s Carla Greenup

Notary Public, Midlands State at Large
My Commission Expires: 5/23/2028
Notary ID Number: 99989

AFFIDAVIT OF LANE ELLIOTT

1 My name is Lane Elliott. I am 45 years old and the current owner and president of
2 Thunderbolt Security, Inc. and have been since January 1, 2021. Thunderbolt was started by my
3 grandfather, Amos Floyd back in the 1970s. I hate that this matter has resulted in a trial. The
4 decision to hire Ashley Owen over Robin McLean had nothing to do with Robin's age. Instead, it
5 was merely a business decision, choosing the best candidate for the job. Before going too far into
6 this affidavit, I need to disclose that I have read Robin McLean's affidavit and Shawn Owsley's
7 affidavit. Thunderbolt's lawyers suggested that I review those affidavits so I can better respond
8 to McLean and Owsley's claims about what was said and when.

9 I never thought I would come to own Thunderbolt, though it was my dream as a child. As
10 a child, I thought it was the greatest thing ever that my grandfather owned a business. Neither my
11 parents nor my aunts or uncles were interested in taking over the business, and my grandfather
12 never put any pressure on them. When I was in college, I would work at Thunderbolt in the
13 summers as a guard, patrolling hallways as such with some more experienced guards. It certainly
14 gave me an insight into how the security industry worked.

15 I wanted to start working at Thunderbolt after graduating college and succeed the Old
16 Timer (which is my grandfather's family nickname). However, he told me that I should go my
17 own way for a while. He told me that if I truly wanted to run Thunderbolt, I needed to make my
18 own success out in the world to show that I was worthy of Thunderbolt. He wanted to make sure
19 that his successor was worthy of it, and that I should not expect to take over just because I was
20 his grandchild.

21 To that end, after college I got a sales job at Flare Security Products in Midland City,
22 Midlands. Flare is a security equipment distributor that evaluates the security equipment needs
23 and sells equipment to security companies as well as organizations that provide their own
24 security. By security, I mean everything from uniforms and name tags to self-defense devices to
25 hardware such as cameras and biometric locks as well as the software to run those. Flare sells
26 products all throughout the country as well as Canada and Mexico.

27 Because I was from Kentucky and because of my connection to Thunderbolt (which
28 bought equipment from Flare), my initial sales job placed me in sales for territory including
29 Kentucky. I was good at my job, and by 2010, I was promoted to Senior Sales Manager for the
30 areas consisting of Kentucky, Tennessee, southern Indiana, and southern Ohio. I still maintained

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31 direct contact with a number of clients to inform them of new security products and effectuate
32 demonstrations and sales of those products.

33 As I mentioned, Thunderbolt is one of Flare's clients. Because Thunderbolt staffed
34 guards for their clients, Thunderbolt would make recommendations to their clients about what of
35 our security products to select when those clients were looking to purchase and install security
36 equipment. I'm talking about things like security cameras, metal detectors, security doors,
37 software, etc. Things that any business operating in the twenty-first century would need.

38 While my grandfather involved himself directly in a lot of decisions at Thunderbolt, the
39 one area he stayed out of was security equipment. He told me that he didn't want his employees
40 or clients to feel that there was a "conflict of interest." My grandfather delegated that function to
41 a small team of senior account managers. I would make my sales pitch to them and arrange
42 product demonstrations, and they would decide whether to accept my recommendations.

43 I received pushback at times, with that team telling me that I was trying to oversell
44 something "newfangled" or "unnecessary" or telling me that "we are still comfortable with the
45 previous model, and it does just fine." It was very frustrating; I understand that sometimes it can
46 be expensive to change out equipment, but it must be done. The pace of technological change
47 makes things obsolete at a faster and faster rate. For example, last year, the battery died on my
48 five-year-old cell phone. I ended up having to buy a new phone because the battery for my old
49 phone was not manufactured anymore.

50 At least I was able to buy a new model phone that day and get it set up. That was
51 relatively simple. Imagine doing that with a whole security setup. Would you want to have a
52 situation where you could not have camera coverage on an essential area because you could not
53 get replacement parts? Software changes too. Do you know how many people are still using
54 Windows XP? Because they like it and because they refuse to buy newer equipment and newer
55 operating systems don't support older model equipment? The answer is horrifying.

56 I also understand that it takes time to train people on new equipment when it changes,
57 and it is easier to keep older equipment everyone is familiar with. And there is a learning curve
58 and not every new system is easy or intuitive. (I still apologize for recommending the Artemis
59 system. That one was notoriously difficult to use and buggy at times.) However, manufacturers
60 are putting effort into making operations and interfaces easier. It is just frustrating that the senior

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61 account managers in charge of equipment preferred the old days where black and white cameras
62 captured everything with grainy video on VHS tapes.

63 Around 2010 or 2011, my grandfather's health began to decline. He asked me if I wanted
64 to leave Flare and return to Scarborough to work with him to take over Thunderbolt. At the time,
65 I did not. I had just gotten engaged, and my fiancé and I were about to buy a house. My
66 grandfather was disappointed, but proud of me and my success at Flare. He took one of those
67 senior account managers I had trouble with, Celia Knox, under his wing to prepare her to take
68 over Thunderbolt in five to ten years. Ms. Knox was one of the staunchest opponents when it
69 came to replacing equipment or adopting new technology. I am certain that if she had it her way,
70 cameras from 1985 would still be used, with parts held together with duct tape. She left in 2018
71 when she got a job overseas, leaving the Old Timer with no clear successor. Unfortunately, her
72 influence over the other senior account managers remained, and they were still resistant to
73 change.

74 My grandfather's health declined more rapidly in 2019, and in late spring that year, he
75 asked again if I would be willing to move back to Scarborough and take over Thunderbolt. My
76 spouse and I were in the process of a divorce, and this seemed like a clean break. By Christmas,
77 my divorce was finalized, the house sold, and I bought a condo in Scarborough. The plan was to
78 work with and shadow my grandfather for all of 2020 and then I take over in 2021. He also
79 promised that once everything was in my hands, he would not interfere.

80 The COVID-19 pandemic ruined any hope of an orderly year of shadowing my
81 grandfather. With businesses and events closing, there was a reduced need for in-person security
82 officers (the Old Timer would refer to them as "front-line guards" or "boots on the ground"
83 guards). I do have to credit my grandfather's loyalty to his people - he refused to lay anyone off
84 during the pandemic, even using his own money to help meet payroll until he left at the end of
85 2020. There was a cybersecurity side that actually did quite well and grew some during the
86 pandemic. It helped that those employees could work from home and given that a lot of
87 businesses had people working from home as well, there was more of a need for cybersecurity.

88 I think the pandemic helped a lot of people see that technology would play a large role in
89 every aspect of life going forward. I remember the first time I had a Zoom call with Old Timer
90 during the pandemic. It was his first Zoom call ever. Shawn Owsley, the assistant human
91 resources director, helped him set up Zoom on his computer and apparently heard my

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92 grandfather's conversation with me. I will say that having read Shawn's account of that call, my
93 recollection is somewhat different. I congratulated my grandfather on joining the twenty-first
94 century and asked him to direct his senior employees (the ones I dealt with for sales) to do the
95 same. By that, I meant have them drop their resistance to changes in technology. However, I do
96 not recall saying anything about a "glue factory." Most of the conversation was about how my
97 grandfather thought Zoom was something out of Star Trek.

98 During that year shadowing my grandfather, I found out the head of human resources was
99 planning on retiring along with my grandfather. I heard a rumor that she was doing so because
100 she did not want to work for some "whipper snapper," but I never confirmed that. I know Shawn
101 wanted to be next in line, but I decided I needed at least one friend in a senior position, so I
102 reached out to my old college friend Riley Gallatin who was in human resources at Flare and
103 offered Riley the director of human resources position at the end of the year. Riley accepted.

104 On January 1, 2021, the changeover was complete, and I was in charge. I was glad to see
105 that the senior account managers who were against my attempts to modernize security
106 technology left as well. But there were decisions to make; by that time a lot of businesses were
107 still closed indefinitely and a lot of events for that year were canceled. Thunderbolt could not
108 afford to keep everyone on payroll indefinitely, and I certainly couldn't afford to supplement
109 payroll like my grandfather did. A right-sizing, or a reduction in force, would have to be made.

110 However, I thought that this would lead to opportunity down the road. While I have very
111 limited experience a security guard, I am more than familiar with the tools they used. I sold those
112 tools after all! Thunderbolt would emerge from the pandemic as the premier security company in
113 the region with guards able and ready to use the best security technology possible! Helping our
114 clients rid themselves of obsolete systems, and our security officers able to use the latest in
115 security technology, such as facial recognition systems, video analytic programs, artificial
116 intelligence tools, and integration of those tools into mobile devices. We also want our guards to
117 know how to detect attacks on those tools. This vision is what I communicated in my first email
118 to Thunderbolt's clients as Thunderbolt's new owner.

119 The unpleasant part had to come first; deciding which guards had to be let go. On January
120 2, 2021, I introduced Riley to Shawn. I could tell right away that Shawn was not happy to be
121 passed over as director of human resources. Riley and I figured Shawn already knew, but
122 explained to Shawn that we couldn't afford to carry around dead weight anymore. Yes, I did use

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123 that term; I will admit it was not a kind description. Riley had Shawn help gather personnel files
124 so we could go through them. I was hoping Shawn would be a team player and help Riley and
125 me make the best decisions, but Shawn's heart wasn't in it. Eventually we just asked Shawn for
126 clarification on employees at times.

127 If Thunderbolt wanted to be a first-rate security firm, we needed to evaluate who had the
128 technology skills needed and to separate those employees who had a record of causing problems
129 with clients. So, we looked at tech skills of guards, their disciplinary records, and reports from
130 account managers.

131 I actually do remember some of the conversation regarding Robin McLean. I thought it
132 was odd that Shawn was going to bat for McLean when Shawn had been the one to issue a "last
133 chance agreement," especially since that last chance agreement involved McLean wiping
134 security footage by accident. Shawn's position was that the discipline was disproportionate and
135 only so harsh to placate the client. I realize the accident involved the Artemis system (which was
136 notoriously hard to use and was being phased out), but that level of discipline coupled with the
137 fact McLean was obviously not tech savvy made the decision to let McLean go quite easy. Why
138 would we keep someone who made a client that angry? Shawn also told us that McLean had
139 turned down promotions to account manager in the past, preferring to remain a guard. This
140 showed to me that McLean preferred to be in a stagnant role, lacking drive to improve and learn
141 new skills.

142 In the end, we let 100 guards go. I did not particularly pay attention to the ages of those
143 who were let go, but I know Riley and Shawn had to prepare a summary of how many were let
144 go by age forty and over and under forty and disciplinary history and give it to everyone who
145 was let go. Apparently, this is required by law. Exhibit 7 is that summary. I have no reason to
146 dispute the numbers in that summary. But age had nothing to do with who was let go. We wanted
147 to keep those who were tech savvy, supplemented by new hires once business started opening
148 and events started happening. Plus, that was a good opportunity to get rid of employees with
149 significant disciplinary histories. I think it helped the remaining guards shape up, understanding
150 that the new Thunderbolt would not let things slide like the old guard did. Furthermore, when
151 everything was back to normal, I wanted people to associate Thunderbolt Security, Inc. with
152 "technologically advanced."

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153 To that end, I also worked with Flare to expand its offerings in security classes at
154 Scarborough Community College. A number of years ago, I convinced my grandfather to work
155 with the community college to invest in courses on security and cybersecurity. It would help
156 Thunderbolt have a pool of recruits trained in the latest security methods and systems. It would
157 help Thunderbolt and Flare in showing that they care about investing in the community. It would
158 help the community college in becoming the go-to place for security studies as no other school in
159 the area had such a program. By fall of 2021, there was an official Security Studies Department,
160 offering an associate degree in Securities Management with tracks in physical security and
161 cybersecurity. Max Casey, the department chair, is testifying as an expert for Thunderbolt in this
162 trial.

163 Towards the latter part of 2021, businesses started reopening, schools were fully back to
164 in-person classes, and community events and parades were being planned again. Demand for
165 security guards was picking up and we were getting plenty of business, especially as a few other
166 security companies in the area had not survived the pandemic. It was time to start hiring again.

167 My main concern with hiring new guards was that they were a fit for my vision of a tech-
168 savvy Thunderbolt Security, Inc. Riley and Shawn took on the heavy lifting when it came
169 posting job openings and interviewing. Prior to the hiring decision in this case, we hired in
170 groups of ten guards. There were ten of those groups of ten for 100 overall. Riley would
171 interview the candidates and then Riley and I would come to a decision about who would be
172 hired. Shawn would handle the paperwork, such as setting up direct deposits and tax
173 withholding, after a new guard started.

174 I had a preference for those who had been through the security course offerings at
175 Scarborough Community College over those who had been guards elsewhere. After all, the
176 candidates who had been to the community college were trained on the systems we use as well as
177 our security methods and protocol. Beyond that, I wanted candidates who were able to
178 understand and able to use technology. You can't expect someone who doesn't know how to use
179 Google to operate a facial recognition system, can you? Our clients deserve better.

180 I did not pay attention to the ages of the candidates at all. Apparently the EEOC made a
181 list about the number of guards hired, looking at the ages and education of the candidates who
182 were hired as well as those who applied, which is Exhibit 8. My lawyers obtained that list from a

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183 Freedom of Information request after the EEOC investigation. I have no reason to doubt its
184 accuracy.

185 As to job postings, they clearly spelled out the types of candidates I wanted. We used an
186 advertising agency to come up with the actual finished product of the job posting, but we
187 provided the language we wanted in the qualifications. The advertising agency added some stock
188 photographs to make the posting look more attractive. Riley and I gave the final approval before
189 the posting went out on job sites and at the Community College. The posting in Exhibit 1 is the
190 job posting that McLean answered and is a fair representation of the type of posting we used.

191 Turning to the decision of hiring Ashley Owen over Robin McLean - I had no idea
192 McLean had even applied until I was discussing the hiring decision with Riley. Unlike the group
193 hiring, we had a need for just one new guard at the time of that posting. The only two candidates
194 who applied were McLean and Owen. When it comes to the interviewing candidates, Shawn
195 would give a tour of Thunderbolt to the candidate, and Riley would do the interview. I have no
196 idea what was said during any tours or interviews other than what I read in Shawn and McLean's
197 statements to the EEOC. To the extent they differ from Riley, I would trust Riley more.

198 As I said before, Riley and I would discuss the candidates after interviews. Quite frankly,
199 I don't remember discussions on most candidates. There are just too many. I have some
200 recollection of the discussion regarding McLean and Owen however - and that is because Riley
201 reminded me of McLean's last chance agreement. That gave me serious pause on hiring McLean,
202 even though McLean had taken some security courses at the community college and did fairly
203 well. However, Owen had a full associate degree, and while her track was in cybersecurity, it
204 demonstrated that she had a better handle on technology than McLean. The clear answer was to
205 hire Ashley Owen.

206 From reading Shawn's affidavit, it looks like Shawn overheard some of the discussion
207 Riley and I had about McLean and Owen. I disagree with parts of Shawn's account. Riley
208 certainly never called McLean an "old timer." What Riley actually said was that McLean had
209 "worked for the Old Timer," meaning my grandfather. I also never said anything like "if you
210 can't handle technology, you don't have a place in security anymore," but I would agree with
211 that statement. Apparently, Shawn misinterpreted that conversation which led to Shawn's
212 departure from Thunderbolt at the end of February 2023.

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213 I thought nothing of Shawn leaving until we were hit by the EEOC investigation, where
214 McLean claimed we had not hired McLean due to age. That is completely ridiculous. Perhaps the
215 average age of Thunderbolt's employees is younger now than it was in 2019, but that's
216 coincidental. Some of our hires have been over forty. If you look at the EEOC's own chart,
217 Exhibit 8, you will see that six of the groups of ten of new hires didn't even have a candidate
218 who was forty or over!

219 The EEOC did not sue us on McLean's behalf, but instead gave McLean a "right to sue"
220 letter. That should show you that even the EEOC knows Thunderbolt did nothing wrong and
221 does not want to waste resources on a frivolous lawsuit. I instructed my lawyers to send
222 McClean a reasonable settlement offer, and I only did that to try to make this go away. McLean
223 did not accept, and we are going to trial.

224 Worse yet, I found out my grandfather had sent McLean a letter at the beginning of 2024
225 telling McLean that McLean "had been wronged and had every right to seek redress" and
226 apologizing for my actions, hoping I would "do what is right." My lawyers showed me a copy of
227 that letter. Thunderbolt is no longer the Old Timer's concern; he should have stayed out of this
228 like he promised.

229 Nothing I did was out of dislike or hatred of older persons. Just as a precaution, after the
230 EEOC investigation, we have removed language like "fresh blood" and "tech savvy" from our
231 job postings. Exhibit 2 is a fair example of the job postings for guards we use now. I don't think
232 that language is "age coded," but I don't want another lawsuit. Robin McLean was a loyal
233 employee under my grandfather's reign, but I don't think McLean is suited to be a security guard
234 in today's technology-driven world. I will agree that McLean's community college record shows
235 improvement, but not enough when compared to Ashley Owen (who has been doing a fine job,
236 by the way). My vision is to have Thunderbolt Security, Inc. be the tech savvy security company
237 for the tech savvy world, and I will not apologize for wanting candidates that fit best with that
238 future.

239 I am familiar with the following exhibits: Exhibit 1, the job posting that Robin McLean
240 answered; Exhibit 2, the job posting used after the EEOC investigation; Exhibit 3, Robin
241 McLean's last chance agreement; Exhibit 5, the letter my grandfather sent Robin McLean;
242 Exhibit 6, Robin's severance agreement; Exhibit 7, the reduction in force statistics
243 accompanying the severance agreement; Exhibit 8, the EEOC statistics regarding hiring

AFFIDAVIT OF LANE ELLIOTT

244 following the reduction in force; Exhibit 9, Robin McLean's transcript from Scarborough
245 Community College; Exhibit 10, Ashley Owen's transcript from Scarborough Community
246 College; Exhibit 11, the email I sent to Thunderbolt's clients; Exhibit 14, the Right to Sue letter
247 issued to Robin McLean; and Exhibit 15, the settlement offer sent to Robin McLean's lawyers. I
248 swear or affirm the truth of the statements in this affidavit. Before signing this affidavit, I was
249 told that it should contain everything I know may be relevant to my testimony and I followed
250 those instructions. I also understand that I can and must update this affidavit if anything new
251 occurs to me up to and until the moment before opening statements in this case.

/s Lane Elliott
STATE OF KENTUCKY)
)
COUNTY OF CASTLEN)

SUBSCRIBED AND SWORN before me by Lane Elliott this the 1st day of March, 2024

/s Angela McCracken
Notary Public, Kentucky State at Large
My Commission Expires: 5/23/2028
Notary ID Number: 99997

AFFIDAVIT OF RILEY GALLATIN

1 My name is Riley Gallatin. I am 45 years old and currently the Director of Human
2 Resources at Thunderbolt Security, Inc. Prior to that, I was a human resources manager at Flare
3 Security Products in their headquarters in Midlands City, Midlands. This whole thing, the EEOC
4 investigation and this lawsuit, is a mess. There are times I wished I had stayed at Flare; this
5 lawsuit has not only tarnished Thunderbolt's reputation but mine as well. But in any event, I
6 have every confidence Lane Elliott and I will come out ahead. I should mention that I reviewed
7 Robin McLean's affidavit and Shawn Owsley's affidavit before preparing my affidavit at the
8 direction of Thunderbolt's lawyers.

9 I am not a Kentucky native. I am originally from Midlands City, Midlands. Prior to
10 moving to Scarborough, I had never been to Kentucky except for a conference in Lexington
11 once. The conference had an outing in Keeneland which was nice. But what brought me to
12 Kentucky was Lane Elliott. Lane and I had met in college and became fast friends.

13 While in college, I learned from Lane that Lane's grandfather, Amos Floyd, owned a
14 security company because Lane often talked about succeeding the "Old Timer," the nickname for
15 Lane's grandfather. Lane even went back to Scarborough and worked as a security guard during
16 summer breaks. While Lane was in Scarborough, I stayed home in Midlands City and interned at
17 Flare Security Products, Inc. in their human resources department (it was completely
18 coincidental that I went to work for Flare after graduation). Flare sold equipment and security
19 systems for security companies. By that, I mean selling the gear for security officers such as
20 uniforms, communications systems, restraints, and weapons as well as hardware and software for
21 motion sensors, cameras, etc. Flare had a nationwide reach, and even sold equipment in Canada
22 and Mexico.

23 I thought Lane would be going back to Kentucky after college and working for
24 Thunderbolt, but apparently Lane's grandfather wanted Lane to go down a "different path."
25 Since I had a job lined up in human resources at Flare, I was able to help Lane get a job there in
26 the sales department. Of course, it also helped that Lane was related to a client; Thunderbolt
27 sourced its equipment and systems from Flare.

28 Lane had a knack for sales; I could tell because Lane received bonuses for exceeding
29 target quotas every quarter. Lane eventually became Senior Sales Manager for Lane's sales
30 territory. I wish I could say that I rose just as far. While I did receive a couple of minor
31 promotions and raises, I remained in the medium level of human resources at Flare.

AFFIDAVIT OF RILEY GALLATIN

32 Lane and I continued to be good friends during our time at Flare. I was even in Lane's
33 wedding party. I had also introduced Lane to Lane's ex-spouse, but Lane never held that against
34 me. Sometimes at lunch, Lane would vent to me about trying to sell products to Thunderbolt.
35 Lane's grandfather refused to deal directly with Lane due to a perceived "conflict of interest."
36 Instead, Lane dealt with a group of senior employees who were empowered to make decisions
37 regarding Flare's products - both materials for guards as well as recommendations for
38 Thunderbolt's clients. From what Lane told me, most of those members would be slow or
39 resistant to accept or adopt new products, particularly if they thought that previous products were
40 doing well and had serviceable life left. Lane told me more than once that those senior members
41 "wanted to remain in the time of the dinosaurs."

42 In 2019, Lane told me that Mr. Floyd wanted Lane to come home and take over
43 Thunderbolt. The idea was that Lane would shadow Mr. Floyd during 2020 and take over at the
44 start of 2021. I wished Lane the best and hoped that we would be able to stay in contact. Of
45 course, in 2020, the pandemic happened, and the world went on lockdown. I was getting used to
46 working from home when Lane contacted me and asked if I would be willing to come to
47 Scarborough to be the Director of Human Resources for Thunderbolt.

48 I was a bit apprehensive at first; everything I knew was largely in Midlands City, and I
49 had never been an assistant director, let alone director of human resources. Lane told me that the
50 current director was retiring at the end of 2020, ostensibly not wanting to work for the "whipper
51 snapper." Lane told me, "Look, everyone here is part of the 'old guard,' my grandfather's
52 people. That includes the current assistant director. There are going to be some changes coming,
53 painful changes at first. I need an ally here. I need someone I know and trust. I need someone
54 who is part of the twenty-first century to help bring this company into the twenty-first century."
55 Lane also explained that Thunderbolt was only about 250 people, much less than what I was
56 used to at Flare.

57 Lane put me in touch with Daviess Realty, LLC who found me a home in pretty short
58 order, and I moved to Scarborough after Thanksgiving in 2020. I decided to spend about a month
59 getting used to the city (smaller than what I was used to, but not without its charm) and spent
60 time with Lane getting used to what Lane wanted to do once I started.

61 After I officially started, Lane explained the first order of business would be to "right-
62 size" Thunderbolt. Apparently, many of the guards were idle during the pandemic. Lane's

AFFIDAVIT OF RILEY GALLATIN

63 grandfather kept them on payroll rather than lay anyone off. Lane explained that Thunderbolt
64 barely squeaked by during that time due to the success of the cybersecurity division and Lane's
65 grandfather putting his own money into making payroll. Lane explained that there was a double
66 purpose for the layoffs: "Not only does this keep Thunderbolt afloat but allows us to get rid of
67 some of the dead wood. Thunderbolt will come out of this with the most tech savvy workforce in
68 the area!"

69 On January 2, 2021, I was introduced to Shawn Owsley, the assistant director of human
70 resources. I could tell that Shawn was not entirely pleased to be passed over for the job of
71 director. I don't think I would have been happy either. During an awkward handshake, Lane told
72 Shawn, "I need someone who will help me make tough decisions regarding the future. An
73 outsider." Shawn asked Lane what was meant by "outsider," and Lane said that meant someone
74 who was not part of Mr. Floyd's circle.

75 I then added, "I hope we can work together. Lane and I will need your expertise in
76 making some decisions with right-sizing." I explained to Shawn that right-sizing meant a
77 reduction in Thunderbolt's workforce due to a lack of business for the front-line security
78 officers, with the idea that we would build that side of the business back up as businesses and
79 events needed guards again.

80 I could tell that Shawn was not happy about that. Shawn had been at Thunderbolt for
81 some time, and what we were telling Shawn was that a number of people Shawn had known over
82 the years were about to lose their jobs. Lane and I asked for Shawn's input into those decisions at
83 first, but we did so less and less over time. Shawn was rather resistant, and personally I thought it
84 was cruel to ask Shawn to have heavy input into who was let go, so Lane and I got to the point
85 where we just asked for clarification on certain individuals.

86 Lane's position was that we needed to preserve those with superior technological skills
87 balanced against disciplinary records. Personally, I thought seniority should factor in as well, but
88 Lane disagreed. Lane believed that the future of Thunderbolt was tech-based and that those who
89 could not adapt had no place there.

90 Lane and I examined the credentials of each guard (particularly technological), their
91 disciplinary records, and reports from account managers. Disciplinary records regarding
92 mishandling or misuse of technology cut heavily against the employee. I remember one guard
93 who had only two years on being disciplined for videotaping himself doing a popular TikTok

AFFIDAVIT OF RILEY GALLATIN

94 dance on video on duty at a client's business and posting that video on TikTok. That video was
95 discovered by the client, who was not very pleased. He was one of those cut.

96 I do remember discussions of Robin McLean, particularly because Shawn stood up for
97 McLean. It seemed to me that being put on a "last chance agreement" for accidentally wiping
98 security footage that would help a client in litigation was a perfectly valid reason to get rid of
99 someone in a layoff - and Shawn had signed off on that agreement at the time. Shawn explained
100 that the last chance agreement was against Shawn's recommendation and was issued only to
101 appease the very angry client. Shawn also explained that the security system the client was using,
102 Artemis, was very difficult to use and others had made the same mistake. I have no background
103 in these systems, but Lane agreed that the Artemis system was particularly tricky. Shawn also
104 emphasized that McLean had actually been offered promotions to account manager in the past
105 but turned them down because McLean preferred being a guard. Lane believed, however, that
106 this showed that McLean was not tech savvy. My concern was that because the client was so
107 upset, and that the deleted footage was key to a lawsuit, that McLean was a liability risk to
108 Thunderbolt. Tech aside, that was enough of a reason to let McLean go, and probably should
109 have been done in the first place.

110 In the end, about a hundred guards were let go, and a few others left of their own accord
111 around that time. Exhibit 7 is an accurate summary of how many guards were let go, how many
112 were over forty and under forty, and whether each group had major or minor disciplinary history.
113 When doing a layoff of this type, a business of Thunderbolt's size must prepare a summary like
114 that and attach it to any severance agreement that was offered.

115 On the day of the layoff, we assembled everyone who was being let go into a large
116 conference room. As director of human resources, it was my job to deliver the bad news. Shawn
117 was supposed to be with me, but in the end, Shawn could not bear to go into the room. I don't
118 blame Shawn; Shawn knew a lot of the people being let go. I heard Shawn derisively call the
119 reduction in force "the culling." I think that was harsh, given the health of the company was at
120 stake, but I let it go.

121 In the conference room, I explained that Thunderbolt was going to have to go through a
122 "right-sizing," that we had to make some hard decisions, and that we would make sure everyone
123 received good references. There was a lot of hugging and crying. I hoped to never do that again.
124 During my time at Flare, I was never the one who had to let anyone go, let alone a whole group.

AFFIDAVIT OF RILEY GALLATIN

125 After that unpleasantness was over Lane and I sat down to discuss the next steps. Even
126 though people were let go now, Lane and I saw opportunities in the future. Businesses would
127 open in the coming months, and festivals would start again. A few other security companies
128 closed their doors during the pandemic, leaving their business up for grabs. As part of that, Lane
129 wanted to make sure that when we started hiring again, we hired guards that fit in with Lane's
130 vision of Thunderbolt - one where all our employees were the tech savvy workforce of the
131 twenty-first century.

132 When it came to advertise for open positions, we advertised on Indeed, Facebook, and all
133 the online sources. Exhibit 1 is a copy of the job posting we used in this case, but it is also
134 representative of all our job postings at the time. Advertising online is pretty standard nowadays.
135 When was the last time anyone opened the classified section of the newspaper? There were few
136 printed job postings hung up at Scarborough Community College, but those were printed and
137 placed by the college (though using our posting). We have an advertisement company develop
138 the finished product, but the language in the posting comes from Lane and me. The photographs
139 are stock photos chosen by the advertising agency, though we have final approval. I was a bit
140 uneasy about the stock images in Exhibit 1, but Lane thought the images were fine. Lane thought
141 the stock images "showed what we were looking for - the best candidates regardless of gender or
142 ethnicity."

143 Speaking of the community college, we would get a numerous candidates from there.
144 Thunderbolt and Flare sponsored a Security Studies associates degree with tracks in physical
145 security and cyber security. Lane preferred those who had taken at least some classes at the
146 community college as they would have been trained in security techniques and systems used by
147 Thunderbolt.

148 Normally during the hiring process, we would hire ten guards at a time from among those
149 who applied. Shawn's job was to collect and prepare the applications and other material like
150 transcripts for review and reference during interviews as well as handle the paperwork for new
151 hires. Shawn would also give tours of the facilities to candidates. I would conduct the interviews
152 and following that, Lane and I would discuss the candidates and decide who we thought were the
153 best candidates.

154 The choice between Robin McLean and Ashley Owen was a bit unusual as we were only
155 hiring for one guard that time, rather than ten. I have some memory of McLean's interview, but

AFFIDAVIT OF RILEY GALLATIN

156 not perfect memory. You must understand that I had conducted over one hundred interviews.
157 That is why Thunderbolt's lawyers wanted me to review McLean's affidavit and Shawn's
158 affidavit to try to refresh my memory. I disagree with some of McLean's account of McLean's
159 interview.

160 I also remember that I had been busy that week and did not prepare like I should have for
161 McLean's interview. I remember that because when I told McLean that management goes by
162 first name now at Thunderbolt (after McLean referred to me by honorific and last name),
163 McLean said something to the effect of "Yeah, I was in the old guard." The tone was harsh, like
164 McLean was offended. I looked at my tablet (I have all the candidate information on an iPad)
165 and realized that McLean was a former employee. I was a bit embarrassed that I had not noticed.

166 I remember saying, "The Thunderbolt of today is not necessarily the Thunderbolt you are
167 used to." I said that because McLean had been separated from Thunderbolt for a couple of years.
168 I also mentioned "Lane Elliott's vision of Thunderbolt is based in technology, and that was your
169 problem before. Do you think you can adapt?" I asked that because of the last chance agreement
170 issued to McLean for accidentally deleting security footage.

171 McLean mentioned having forty years of experience and adapting to the technological
172 change that came with that. McLean also mentioned taking classes at the community college and
173 taking courses regarding technology. Aside from a C+, McLean's transcript was pretty good.
174 Then I said, "Well, a lot has changed. We have new people here. And new clients. Will you have
175 trouble adjusting to the new Thunderbolt?" I asked this because there had been changes,
176 particularly in personnel. At no time did I ask if McLean could "keep up." McLean answered, "I
177 am just here to do a job." I asked for McLean's best reason to be hired, and McLean reiterated
178 the forty years of experience. Overall, it was not a bad interview.

179 Ashley Owen's interview was unremarkable. I did ask why she was interested in a guard
180 position when her training was in cybersecurity. She stated that we were not advertising for a
181 cybersecurity job but thought this was a good way for her to get her foot in the door at
182 Thunderbolt. She also mentioned that it would be helpful for her to develop a diverse skill set in
183 both physical security and cybersecurity as time goes on as the two types of job may start to
184 merge more and more. I liked that answer.

185 Lane and I discussed the two candidates. After reviewing Shawn's affidavit, I will say
186 that neither Lane nor I ever referred to McLean as an "old timer." Instead, any mention of "Old

AFFIDAVIT OF RILEY GALLATIN

187 "Timer" was directed at Lane's grandfather. Lane and I agreed that Ashley Owen had the better
188 technology skillset, and her overall skillset was diverse than McLean's, even though Owen was
189 more suited for cybersecurity. I also mentioned that Owen made a good point about physical
190 security and cybersecurity may start to merge more in time. What Owen lacked in experience
191 was more than made up for in technological prowess. The choice was clear - Ashley Owen was
192 the better candidate.

193 The choice to go with Ashley Owen was the catalyst for Shawn's departure. I told Shawn
194 that I hated to lose all the experience Shawn brought to the company. Shawn's response was
195 "Experience doesn't seem to be wanted around here." When I asked Shawn what that meant,
196 Shawn said, "We old timers don't have a place here anymore." Shawn then turned and walked
197 away. When I was told about the EEOC complaint, I realized Shawn was referring to the
198 decision to hire Owen over McLean.

199 The EEOC investigation was not fun. I did learn a few things though - I won't ever give
200 an employee a milestone birthday card ever again! I did give Shawn a birthday card saying,
201 "over the hill" and "old timer" for Shawn's 50th birthday. It was one of those humorous
202 milestone birthday cards you get at any greeting card store! My supervisor at Flare got me a
203 similar one for my 40th birthday, and I thought nothing of it. The card I gave to Shawn has
204 nothing to do with what I think of anyone's work capabilities due to age. It was just meant to be
205 funny.

206 Since the EEOC investigation, Lane and I have also removed some of the language from
207 job postings about "fresh blood" and "tech savvy" because we don't want any future complaints
208 about our postings being "age coded." Exhibit 2 is a fair representation of the job postings we
209 use now. After the EEOC investigation, I sent some of my old colleagues at Flare a copy of our
210 job posting in Exhibit 1. They said they could see how the language like "fresh blood" and "tech
211 savvy" as well as the stock images could give someone the impression that Thunderbolt only
212 wanted younger employees.

213 Ashley's performance so far has been acceptable. Terry Mogan, the account manager she
214 works with the most, noted that the social aspect of the job, particularly interpersonal
215 communication and "customer service" skills, do not come naturally to Ashley. Terry has noted
216 that Ashley has been making an effort to improve those skills over the last few months.

AFFIDAVIT OF RILEY GALLATIN

217 I hate that it has come to this. I know I never want to go through an EEOC investigation
218 or a lawsuit ever again. This whole ordeal has tarnished Thunderbolt's reputation and mine. All
219 Lane and I wanted to do was to hire the best guards that matched Lane's vision of what a modern
220 security company should look like - one that is ready to face the challenges our clients face in
221 light of the fast-changing technology. I personally do not care if the guard that matches that
222 vision is 25 or 50. I hope the jury sees the truth and finds in Thunderbolt's favor.

223 I am familiar with the following exhibits: Exhibit 1, the job posting that Robin McLean
224 answered; Exhibit 2, the job posting we use after the EEOC investigation; Exhibit 3, Robin
225 McLean's last chance agreement; Exhibit 6, Robin McLean's severance agreement following the
226 reduction in force; Exhibit 7, the statistics attached to the reduction in force, Exhibit 8, the hiring
227 statistics following the reduction in force as compiled by the EEOC; Exhibit 9, Robin McLean's
228 transcript from Scarborough Community College; Exhibit 10, Ashley Owen's transcript from
229 Scarborough Community College; Exhibit 16, the birthday card I gave to Shawn Owsley. I
230 swear or affirm the truth of the statements in this affidavit. Before signing this affidavit, I was
231 told that it should contain everything I know may be relevant to my testimony and I followed
232 those instructions. I also understand that I can and must update this affidavit if anything new
233 occurs to me up to and until the moment before opening statements in this case.

/s Riley Gallatin
STATE OF KENTUCKY)
)
COUNTY OF CASTLEN)

SUBSCRIBED AND SWORN before me by Riley Gallatin this the 1st day of March, 2024

/s Andrea McCracken _____
Notary Public, Kentucky State at Large
My Commission Expires: 5/23/2028
Notary ID Number: 99997

AFFIDAVIT OF MAX CASEY

1 My name is Max Casey. Since 2021, I have served as chair of the Security Studies
2 program at Scarborough Community College. I have been called as an expert witness to explain
3 the modern qualifications needed as a security officer. I am sorry to have to testify in this case
4 for several reasons. First, both Robin McLean and Ashley Owen were students of mine, and it is
5 never pleasant to have to take a position against a student. Secondly, Thunderbolt Security, Inc,
6 and in particular Lane Elliott, are responsible for working to set up and sponsor the Security
7 Studies Program. We also receive support from Flare Security Products, Inc. where Lane Elliot
8 used to be a sales representative.

9 Both the EEOC investigation and this lawsuit have put Thunderbolt in a bad light, and
10 our close association with Thunderbolt has been a stain on the Security Studies program and the
11 community college as a whole. I worry that Flare might pull back or withdraw their support as
12 well depending on the outcome of this lawsuit.

13 I know many expert witnesses are paid for their time and testimony, just like the
14 Plaintiff's expert is being paid. I don't begrudge anyone trying to make a living, but testifying for
15 money just seems like a mercenary to me. Thunderbolt offered to pay me for my time testifying,
16 but I refused. In any event, the support the Security Studies program gets is enough payment for
17 my testimony many times over.

18 I actually began my career as an ordinary security officer, similar to what Robin used to
19 do. That was how I supported myself through college. I received a Bachelor of Science in
20 Criminal Justice from UMass Lowell and did well enough academically to receive a scholarship
21 to UMass Lowell's graduate program where I received a Master of Arts in Security Studies with
22 a concentration in Industrial and Economic Security. I also became a Certified Protection
23 Professional with the American Society for Industrial Security International (ASIS International)
24 and I maintain that certification today. After graduation, I worked as a security specialist for
25 Glaser Patel, a firm in Midlands City, Midlands that provided security consulting services to
26 municipal governments, educational institutions, industrial facilities, and multi-state businesses. I
27 helped identify security problems for clients, both in terms of physical facilities and online, and
28 developed solutions to overcome those problems.

29 The job was very interesting, and the money was good. However, the job was also
30 stressful, especially with extremely demanding corporate clients. After fourteen years, I decided
31 for a change of pace. That came in 2014 when I was approached by a recruiter who was looking

AFFIDAVIT OF MAX CASEY

32 for people interested in a new security studies department at a community college in a city called
33 Scarborough, KY. I had never been to Kentucky other than a conference in Louisville (and I
34 learned how to correctly pronounce that city's name). I decided to give Scarborough and this
35 program a look.

36 While Scarborough is certainly smaller than Midlands City (which is more comparable in
37 size to Indianapolis), I quickly fell in love with it. There was a symphony, an art museum,
38 theater, and much more affordable houses than Midlands City. Plus, it was close enough to
39 Nashville, Cincinnati, or St. Louis if I wanted to take a day trip to see a professional sports game
40 or college game.

41 What Scarborough Community College was looking to do was create a Security Studies
42 program where a student selects a particular track of study. What that means is that the student
43 would take several technical core courses (along with general education requirements such), but
44 select one of two tracks, or specializations. The two tracks we offered were Physical Security
45 (security where an officer would be physically present in a location) and Cybersecurity (focused
46 on protecting systems, network, and data). The required technical courses for both tracks would
47 encompass some of both areas of security, but the student would take additional courses and
48 electives focused on their chosen tracks.

49 When I was approached to come to Scarborough, the Kentucky Community & Technical
50 College system did offer a Criminal Justice program that did include a Security and Loss
51 Prevention track in a number of sites throughout Kentucky, but Scarborough Community
52 College wanted something more specialized and unique. Something that would draw students to
53 Scarborough. It helped that Amos Floyd, then the owner of Thunderbolt, offered to support the
54 program. I understood Mr. Floyd's grandchild, Lane Elliot, worked for Flare Security Products
55 and understood that it was Lane who talked Mr. Floyd into helping fund and found the Security
56 Studies program, both as a way to support the community and to help train security officers
57 ready for hire. Apparently, this is not unusual; I found out that several of the skilled trades, like
58 local electrician contractors, supported similar community college programs to train people to
59 hire.

60 Of course, designing curricula was not an easy task, but I enjoyed the challenge. When I
61 was first hired, I was technically hired as an instructor in the Criminal Justice Department. The
62 Securities Studies department began as an offshoot of the Criminal Justice program, but we

AFFIDAVIT OF MAX CASEY

63 started growing and increasing our offerings. By 2019, we were offering Security Studies
64 degrees, but under the purview of the Criminal Justice Department. Thanks to the continued
65 support of Mr. Floyd and Flare, by 2021 Securities Studies was its own independent department
66 and I was appointed as its chair.

67 As department chair, I am responsible for managing the Securities Studies department,
68 running from hiring and firing faculty, evaluating, and developing curriculum, managing the
69 department budget, and acting as the spokesperson and advocate for the department. I also carry
70 a teaching load, though a reduced one because of my chair responsibilities. I enjoy teaching more
71 introductory level courses as it lets me get to know the students early on. I do not have a
72 publishing requirement, though I do occasionally write articles and present at seminars. I also
73 keep abreast of industry trends in security as we are educating the security officers of the future.

74 Even though we have been sponsored by Thunderbolt, we do not train exclusively for
75 Thunderbolt. Our students take jobs in different cities and states, and we want them prepared for
76 those. For example, Kentucky does not require any licensing to be a security officer, but
77 Tennessee does. Even in Kentucky, some cities require a special license to be an armed security
78 officer (Scarborough does not). We want our students to have the background to be successful
79 wherever they go. However, Thunderbolt does look highly on our graduates.

80 As I understand it, the jury in this case is being asked, at least in part, to decide if Robin
81 McLean was qualified for the job as security of entry level officer and if so, whether Robin
82 McLean was substantially more qualified than Ashley Owen. Given my experience, I have been
83 asked to shed light on these subjects. As part of my review to prepare me to answer these
84 questions, I have examined (1) the affidavits of Robin McLean, Shawn Owsley, Lane Elliott, and
85 Riley Gallatin; and (2) the following exhibits: Exhibit 1, the job posting that Robin McLean
86 answered; Exhibit 3, Robin McLean's last chance agreement; Exhibits 9 and 10, the transcripts
87 of Robin McLean and Ashley Owen, respectively, and (3) my own review of industry security
88 standards and literature. Professor Corey Spencer has a different area of expertise than I do, I
89 reviewed Professor Spencer's affidavit as well. These materials are commonly used in my field
90 for this type of review and were sufficient for me to come to my opinions in this case.

91 Before going deep into my conclusions, I want to define what a security officer is. In a
92 phrase, at its most oversimplified, a security officer ensures the safety of the client. A security
93 officer is a person hired to protect property, assets, or people. They are also often responsible for

AFFIDAVIT OF MAX CASEY

94 monitoring and controlling access to an area as well as responding to emergencies. Depending on
95 the state and the training, security officers may even have the authority to use force to end
96 violence or detain persons in limited capacities such as shoplifting, though oftentimes the
97 presence of a security officer is designed to deter violence or theft. Some security officers may
98 carry weapons, but many do not. However, it is important to remember that security officers are
99 not law enforcement, though sometimes law enforcement officers may moonlight as security
100 guards or may become security officers after leaving law enforcement. Security officers are not
101 empowered to make arrests, file charges, apply for search warrants, or take people to jail.

102 Many security officers are directly hired by the organization that owns the premises that
103 they guard, but many work for a company like Thunderbolt Security, Inc. that provides security
104 guards to organizations on a contractual basis. In that type of situation, an account manager who
105 is a security specialist will assess the security needs of the client, allow the client to choose a
106 plan according to its needs and the security officers provided by the security company will
107 effectuate the plan.

108 When people hear the term “security guard” or “security officer,” it probably brings to
109 mind the stereotypical idea of someone in a uniform walking down a dark hallway in a factory at
110 night with a set of keys or the traditional “mall cop” chrome a 1980s or 1990s movies or campus
111 security guards patrolling residence halls at night looking for college kids who likely have
112 alcohol in their rooms (I would say I have never been guilty of that, but I am under oath). I want
113 to emphasize, however, that security officers are trained professionals and should be treated as
114 such.

115 Of course, many stereotypes contain an element of truth. Half a century ago, security
116 officers did walk down dark hallways with a flashlight and a ring of keys. However, that is
117 because in performing the functions of a security officer, namely protecting property, assets, or
118 people, and monitoring and controlling access to those areas, those were the only tools available.
119 As time has gone on, those tools have evolved - key locks have been replaced by keycards or
120 biometric locks; walkie-talkies have been replaced by single wire (or wireless) earpieces with
121 push-to-talk radio functions; door alarms have been replaced by interior motion sensors; drones
122 now supplement security cameras (and those cameras have been improved upon since their
123 initial introduction).

AFFIDAVIT OF MAX CASEY

124 Not only do security officers need to be aware of the threats to their clients and their
125 clients' property, but security officers also need to be aware of threats to the tools they use. By
126 that, I mean threats such as malware, hacking attempts, phishing (a form of social engineering or
127 scamming where attackers try to trick people into revealing sensitive information or allowing a
128 vector to install malware). These technological tools complement and enhance the other skills of
129 security officers which include threat assessment, response to threats, and even communication
130 and customer service skills (security officers are a point of contact for their clients and their
131 actions reflect upon their clients).

132 With all that in mind, particularly the technological changes, I am not sure Robin
133 McLean would be a suitable security officer today. Again, it pains me to say this as Robin was
134 one of my students. The reason I say this is that from reviewing Robin's affidavit as well as my
135 own experiences with Robin in my class, Robin's greatest weakness is technology. Robin's
136 affidavit shows that Robin clearly preferred to work with clients that used "older systems," ones
137 that Robin was more familiar with.

138 In addition, Robin received a "last chance agreement" with regards to deleting security
139 footage, further demonstrating Robin's weakness with technology and the dangers that poses to
140 clients. I understand that the Artemis system was not user-friendly and is no longer used at all.
141 However, that failure in technology nearly resulted in disaster, and underscores the need for
142 security officers to be familiar and proficient in the systems and tools they use.

143 Furthermore, during a presentation in my Security Technology class, Robin explicitly
144 mentioned "it would be nice if all this technological change could slow down some." I do
145 acknowledge that the presentation was regarding the Artemis security system. However, such an
146 attitude towards technological change indicates an unwillingness to adapt to changes in security
147 technology.

148 More than just the security technology itself, Robin appears to have had difficulty
149 applying for the open position at Thunderbolt. Applying for a job in today's online world
150 requires far more basic technology skills than operating a security system, and Robin needed
151 assistance in preparing an online job profile and applying for the position. However, it is true that
152 a number of older employees who have not had to apply for a job in the last ten years have
153 difficulty adjusting to that. It was not long ago that paper applications and paper resumes were
154 still the norm.

AFFIDAVIT OF MAX CASEY

155 This is also not to say that someone Robin's age is incapable of adapting to the
156 technological changes of today. Far from it. We have had students in their forties and fifties do
157 quite well in our technology courses and cybersecurity courses. And plenty of older security
158 officers have done quite well adapting to changes on the job. However, the truth remains that just
159 like many other things, the tools of security are becoming more and more sophisticated, just like
160 the threats that security officers face. I applaud Robin for taking courses to try to fill any
161 technological gaps. However, we need the security officers of today technologically
162 sophisticated to match, along with an attitude of adapting to change.

163 Indeed, a 2023 study by Multiverse showed that 2.4 million American workers over the
164 age of 50 are thinking of retiring early due to concerns about being able to keep up with
165 technological change. Again, this is not a statement about older workers in general, but an
166 acknowledgement that technology is changing quickly, and there is pressure to keep up. Those
167 older workers who have an exit who struggle to keep up with technology are looking to use that
168 exit. However, that same study showed that 41% of those workers would be willing to stay if
169 their employer offered training on new technology. 35% of those older workers who have
170 already left said they would come back if offered the opportunity to train. Of course, these older
171 workers are not a monolith; you must evaluate the capabilities of each individual worker to see if
172 they are willing and capable of adapting.

173 Secondly, even if it can be argued that Robin is qualified for the job, when matched up
174 against Ashley Owen, I cannot say that Robin is more qualified than Ashley let alone that Robin
175 is substantially more qualified than Ashley. Before getting to differences, I want to acknowledge
176 where both Robin and Ashley meet the requirements of Thunderbolt's job posting. Both have a
177 high school diploma and at least some college or technical training. Both were able to pass a
178 criminal background check and drug test. Both have valid driver's licenses. Both have the ability
179 to stand or walk assigned patrols; in fact, from what I have observed, both are very physically fit.

180 Now on to where they differ. In Ashley's corner, she has a full associate degree.
181 Furthermore, Ashley's education focused far more on the technology aspects of security, albeit
182 in cybersecurity. That does not mean, however, that Ashley lacks any training in physical
183 security. All students in either degree must take at least basic courses regarding physical security.
184 Robin, on the other hand, has only taken a few classes and has not come close to earning an

AFFIDAVIT OF MAX CASEY

185 associates degree, though again, I will say that those classes were in technology where Robin had
186 a professional weakness, and Robin did fairly well in those courses.

187 Robin and Ashley were in my Modern Technology in Security class, and I was surprised
188 Robin scored higher. However, Robin was taking classes part time, and Ashley was a full-time
189 student. And Ashley excelled in most of her cybersecurity courses. I do note that Robin had a C
190 in Robin's Introduction to Security Principles course, however that is not necessarily unusual for
191 a first course taken by an older part-time non-traditional student, especially if that student had
192 never taken a college course. In my experience, many non-traditional students need time to
193 acclimate how to be a student, especially if they have been long removed from high school.

194 I cannot personally speak to either Ashley's or Robin's ability to maintain a professional
195 demeanor under pressure outside of class. Both did fairly well when called upon in class and in
196 giving presentations. I can infer that Robin did well keeping a professional demeanor during
197 Robin's career as a security officer as my understanding is that Robin's record showed few
198 disciplinary actions. I did encourage Ashley to take a practicum course in either physical security
199 or cybersecurity, but she did not. From reviewing Riley Gallatin's affidavit, it appears that
200 Ashley has done an acceptable job since her hiring, though she lags in interpersonal and
201 customer service skills. However, Riley Gallatin did note that Ashley was showing
202 improvement. Also, both appeared to pay attention in class, though like most people Ashley's
203 age, she occasionally was on Instagram in class.

204 Speaking of disciplinary records, again, Robin has such a record and Ashley does not. All
205 things being equal, it would appear logical that the candidate with no disciplinary history would
206 be superior to the candidate that does. However, I understand that between these two candidates,
207 that may not be an entirely fair comparison. Robin has forty years of experience, Ashley has
208 none. Most security officers do not go four decades without at least some minor blemish on their
209 records. But again, Robin's discipline was for the use of technology, not the least of which being
210 the last chance agreement.

211 I also note that Robin had turned down promotions to account manager in the past,
212 preferring to remain a security officer. That might seem like a point in Robin's favor, but I think
213 it is just the opposite. Refusing a promotion to remain a security officer indicates that Robin
214 lacks the drive to take on new challenges and improve skills.

AFFIDAVIT OF MAX CASEY

215 That circles back to Ashley's biggest advantage - technology. While Ashley may not
216 have concentrated her education in physical security, I believe she would be able to adapt to
217 multiple security and technology systems better than Robin, even if Robin had used some of
218 those systems in the past. Ashley also has a broader scope of talent - she could be moved into a
219 cybersecurity position if the need arose for that; Robin could not. And I cannot argue that it
220 wouldn't be good for a security company to have officers that could be proficient in both roles.

221 I do want to say a few things about the conclusions of Professor Corey Spencer. I have no
222 doubt that Professor Spencer is an accomplished academic and law school professor. I cannot
223 speak to the "discriminatory effect" of language like "tech savvy," but I would respond that
224 technology is present, technology is changing, and technology is not going away. While it is not
225 necessary for a security officer to know the finer points of security tools, such as how to code a
226 facial recognition system, a security officer does need to have a basic understanding of such
227 technology. Furthermore, I question the premise that supposed ageist language deters job
228 applicants. After all, the position advertised was for an entry-level position. In the security
229 industry, most (though not all) of those applying for such positions tend to be younger as they are
230 at the start of their careers.

231 Older persons certainly can make fine security officers and can certainly adapt to the
232 changes in technology. And formal education is not necessary to do well, so long as those
233 security officers can use the tools at this time in the future. It pains me to say this, but Robin
234 McLean is not that person anymore. Even if Robin was willing to put in the time and effort to
235 adapt, I would have a hard time myself choosing between hiring Robin or Ashley. I cannot fault
236 Thunderbolt for making the choice it did. I just hope the jury in this case makes the right choice
237 and finds for Thunderbolt so we can put this episode behind us. Enough damage has been done
238 to Thunderbolt and Scarborough Community College.

239 I am familiar with the following exhibits: Exhibit 1, the job posting that Robin McLean
240 answered in this case; Exhibit 3, Robin McLean's last chance agreement; Exhibit 9, Robin
241 McLean's transcript; Exhibit 10, Ashley Owen's transcript; and Exhibit 13, my curriculum
242 vitae. I swear or affirm the truth of the statements in this affidavit. Before signing this affidavit,
243 I was told that it should contain everything I know may be relevant to my testimony and I
244 followed those instructions. I also understand that I can and must update this affidavit if anything
245 new occurs to me up to and until the moment before opening statements in this case.

AFFIDAVIT OF MAX CASEY

/s Max Casey
STATE OF KENTUCKY)
)
COUNTY OF CASTLEN)

SUBSCRIBED AND SWORN before me by Max Casey this the 1st day of June, 2024

/s Andrea McCracken
Notary Public, Kentucky State at Large
My Commission Expires: 5/23/2028
Notary ID Number: 99997

COMMONWEALTH OF KENTUCKY
CASTLEN CIRCUIT COURT
DIVISION II
CASE NO. 23-CI-01979

ROBIN MCLEAN

PLAINTIFF

v.

THUNDERBOLT SECURITY, INC.

DEFENDANT

EXHIBIT LIST

1. Job Advertisement – December 2022
2. Job Advertisement – Posted After EEOC Investigation
3. Last Chance Agreement
4. Text Messages Between Shawn Owsley and Robin McLean
5. Letter from Amos Floyd to Robin McLean
5A. – Typed Version of Letter from Amos Floyd to Robin McLean (**NOT TO BE ADMITTED**)
6. Robin McLean’s Severance Agreement after Reduction in Force – January 2021
7. Reduction in Force Statistics Attached to Severance Agreement – January 2021
8. EEOC Statistics Regarding Hiring of Security Officers
9. Robin McLean’s Transcript from Scarborough Community College
10. Ashley Owen’s Transcript from Scarborough Community College
11. Email from Lane Elliott to Thunderbolt Security, Inc. Clients
12. Curriculum Vitae of Corey Spencer
13. Curriculum Vitae of Max Casey
14. EEOC Right to Sue Letter
15. Settlement Offer to Robin McLean
16. Birthday Card Given to Shawn Owsley by Riley Gallatin

EXHIBIT 1

Thunderbolt Security, Inc



Ready to join a team known for excellence? Thunderbolt Security, Inc. is the largest security company in Castlen County and the surrounding areas! We are always looking for tech-savvy fresh blood to join our team! When you apply to Thunderbolt, you're not just applying for a job - you are beginning a career!



Responsibilities

- Conduct routine inspections and patrols
- Control access to client facilities
- Monitor surveillance equipment
- Operate metal detectors
- Answer alarms and prevent or stop incidents of theft or violence
- Prepare logs and reports

Qualifications

- High School Diploma (Some college or technical training preferred)
- Able to pass a criminal background check and drug test
- Valid driver's license
- Ability to stand and/or walk assigned patrols
- Able to adapt to different technology systems
- Able to maintain a professional demeanor under pressure
- Strong attention to detail

Benefits

- Starting pay of up to \$15.00 per hour
- Guaranteed work hours / flexible schedule
- Health and dental options
- Work in different and fun locations!

**FULL TIME SECURITY OFFICER
ENTRY LEVEL
NO EXPERIENCE REQUIRED**

OPPORTUNITIES FOR GROWTH!

SCARBOROUGH, KY

EXHIBIT 2

Thunderbolt Security, Inc



Ready to join a team known for excellence? Thunderbolt Security, Inc. is the largest security company in Castlen County and the surrounding areas! We are always looking for hard-working new employees to join our team! Start your new career today!



Responsibilities

- Conduct routine inspections and patrols
- Control access to client facilities
- Monitor surveillance equipment
- Operate metal detectors
- Answer alarms and prevent or stop incidents of theft or violence
- Prepare logs and reports

Qualifications

- High School Diploma (Some college or technical training preferred)
- Able to pass a criminal background check and drug test
- Valid driver's license
- Ability to stand and/or walk assigned patrols
- Able to adapt to different technology systems
- Able to maintain a professional demeanor under pressure
- Strong attention to detail

Benefits

- Starting pay of up to \$15.00 per hour
- Guaranteed work hours / flexible schedule
- Health and dental options
- Work in different and exciting locations!

**FULL TIME SECURITY OFFICER
ENTRY LEVEL
NO EXPERIENCE REQUIRED**

OPPORTUNITIES FOR GROWTH!

SCARBOROUGH, KY

EXHIBIT 3



THUNDERBOLT SECURITY, INC.

LAST CHANCE AGREEMENT

Employee Name: Robin McLean

This Last Chance Agreement (“Agreement”) is made and entered into as of June 24, 2019 (“Effective Date”) by and between Robin McLean (“Employee”) and Thunderbolt Security, Inc. (“Company”) as a last chance opportunity for Employee to maintain employment with Company.

TERMS

1. Employee understands that Company was considering termination for Employee’s negligent misuse of the Artemis Security System on site at the premises of Company's client Millennium on June 15, 2019. Specifically, such negligent misuse consisted of accidental deletion of security footage.
2. Employee understands that such negligent misuse of the Artemis Security System is a serious violation of Company’s policies.
3. Instead of immediately terminating employment, Employee will be suspended from work without pay for ONE workday.
4. Employee will undertake review of the Artemis Security System operation manual and refrain from any further negligent misuse of the Artemis Security System.
5. Employee understands that failure to meet the performance expectations outlined in Paragraph 4 of this agreement, Company may terminate Employee’s employment immediately, without further warning or notice.
6. Employee agrees to release and waive any claims or cause of action against Company arising out of or related to any disciplinary action, termination, or other employment-related decision.
7. This Agreement is in force and effect for ONE year from the date of Employee’s signature on this agreement.

EXHIBIT 3

8. This agreement may not be modified, except in writing signed by both Employee and Company.
9. This Agreement shall be governed by and construed in accordance with Kentucky law.
10. Employee understands and agrees that employment with Company is at-will, terminable by Employee or Company at any time, with or without cause or notice, and that the existence of the terms of this Agreement do not change the nature of that at-will relationship or construe an agreement of employment for any set period of time. Employee understands and agrees that this Agreement in no way prevents Company from taking any disciplinary action against Employee, up to and including termination, for any violations by Employee of any Company policies, guidelines, or rules.
11. Employee has had an opportunity to review this document with an attorney of the Employee's choosing.

BY SIGNING THIS DOCUMENT, THE AFOREMENTIONED PARTIES AGREE THAT THEY HAVE READ AND UNDERSTOOD ALL THE TERMS AND CONDITIONS NOTED IN THIS AGREEMENT.

/s Robin McLean
Employee

6/24/2019
Date

/s Shawn Owsley
Company / Assistant Director of Human Resources

6/24/2019
Date

EXHIBIT 4

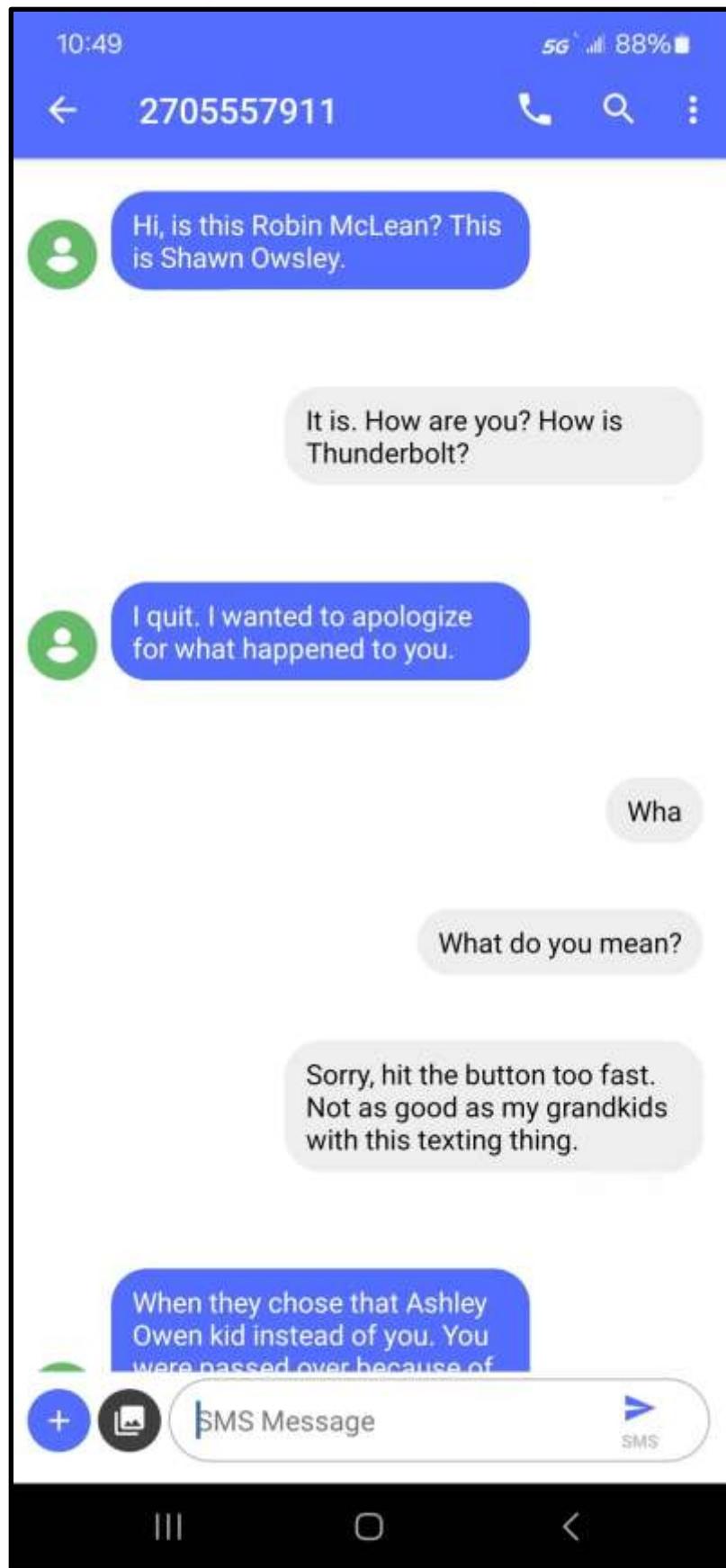


EXHIBIT 4

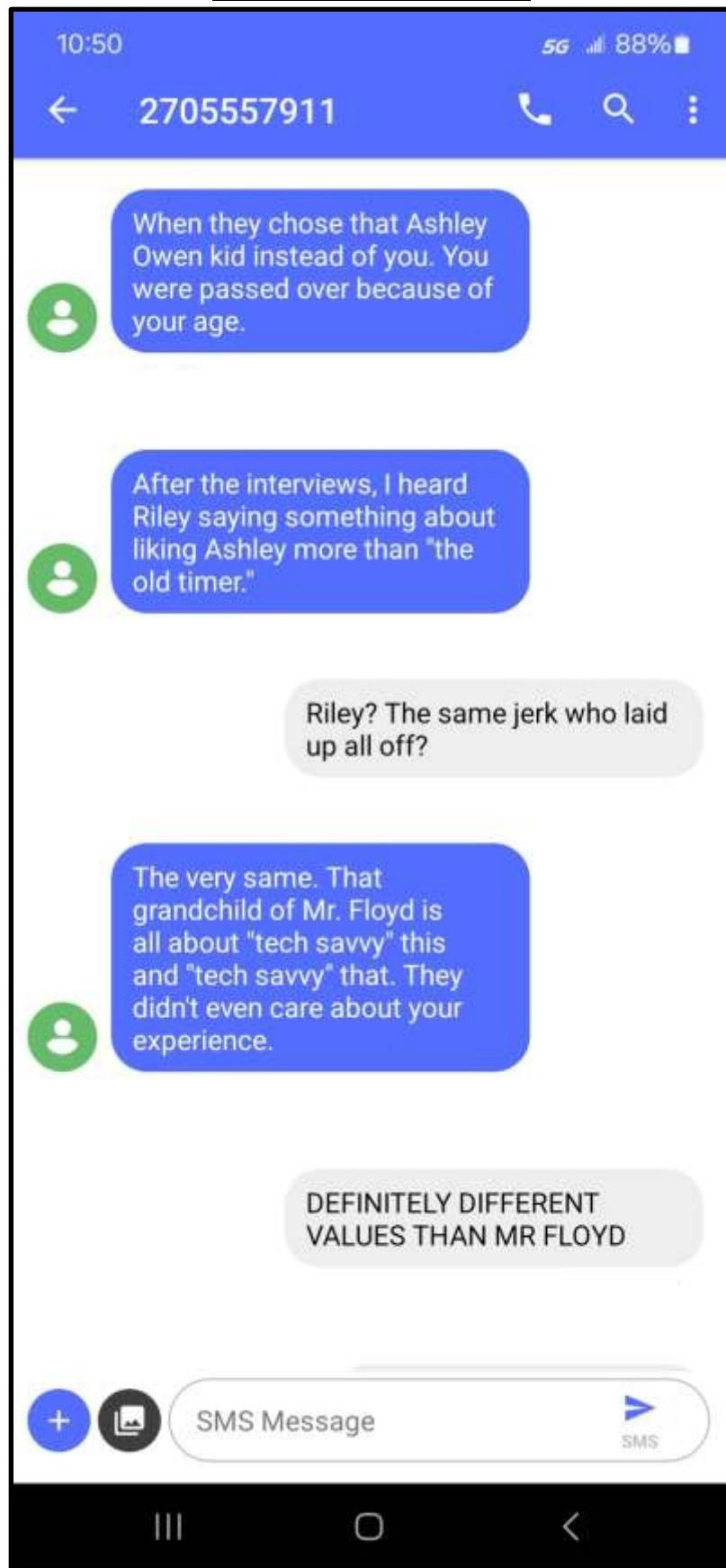


EXHIBIT 4

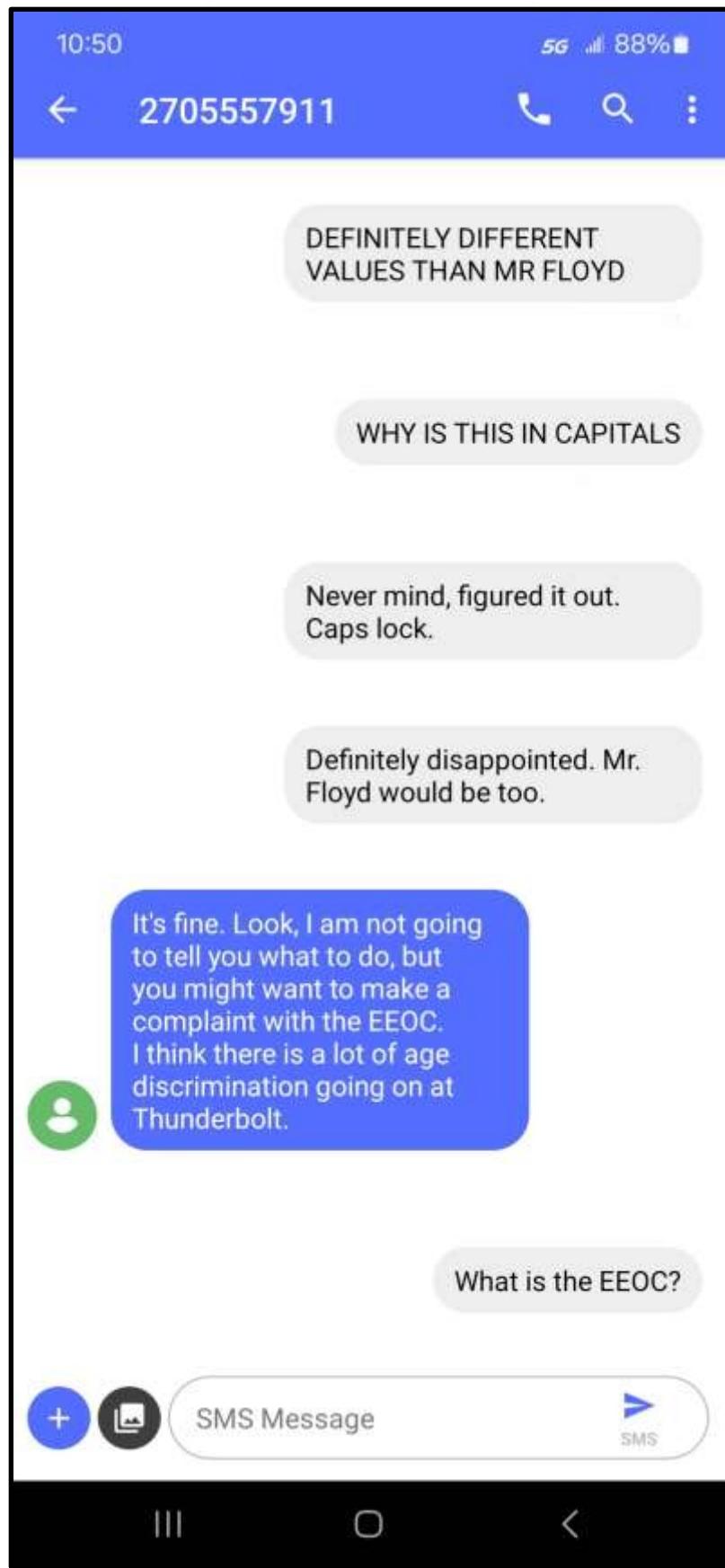


EXHIBIT 4

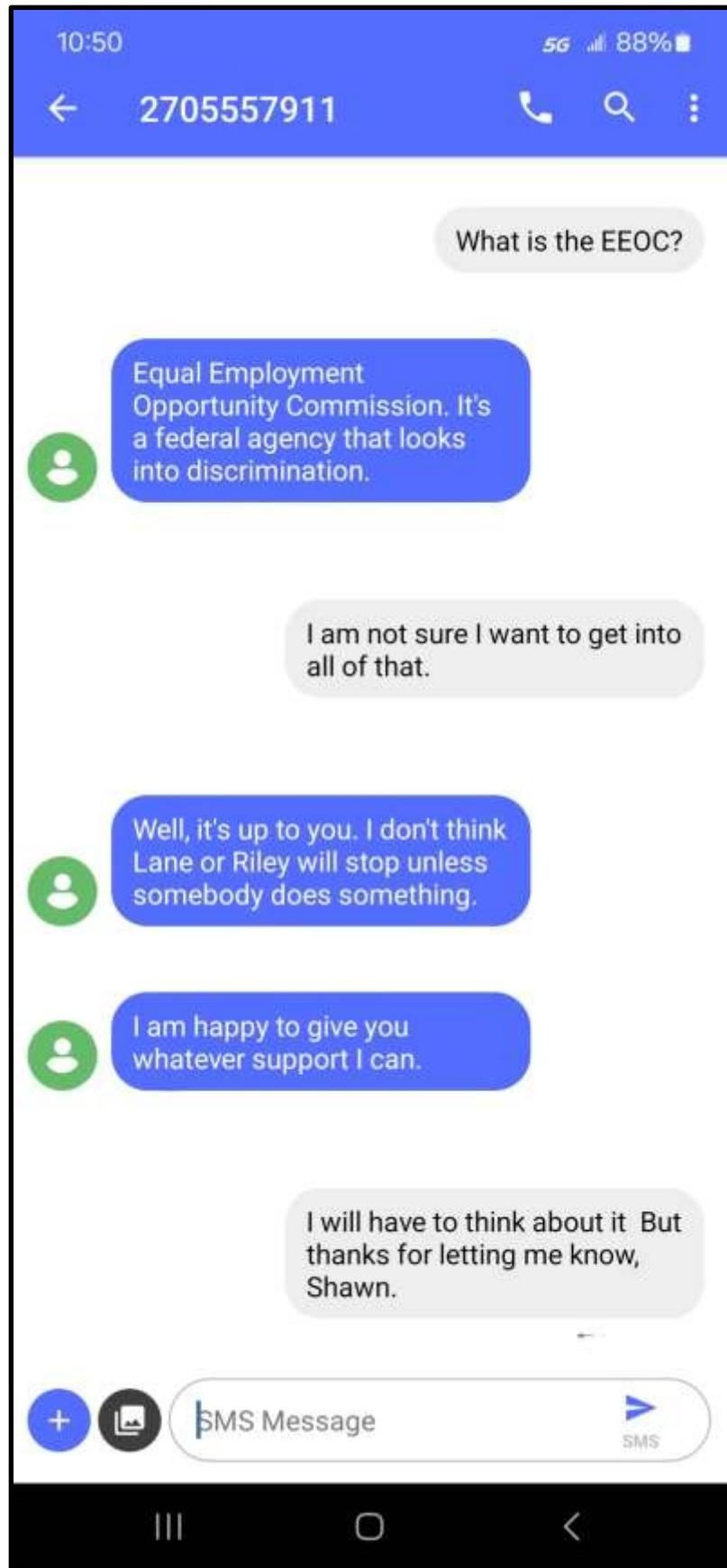


EXHIBIT 5

January 1, 2024

Dear Robin,

First, I want to wish you Season's Greetings and best wishes on the New Year. Regrettably, I have come to learn about the lawsuit you have filed against Thunderbolt County, Iowa. I do not begrudge you in this lawsuit, indeed you have been wronged and have every right to seek redress. Indeed, I am disappointed to know that my grandchild, who I trusted to continue to commit to the values I hold dear, instead eschewed those values leading to this situation. I apologize for Jane Elliott's actions, and I can hope that my grandchild will do what is right. Please do not hesitate to call upon me if I may be of any assistance.

Best regards,

Amor Floyd

EXHIBIT 5A

January 1, 2024

Dear Robin,

First, I want to wish you Season's Greetings and best wishes on the New Year. Regrettably, I have come to learn about the lawsuit you have filed against Thunderbolt Security, Inc. I do not begrudge you in this lawsuit, indeed you have been wronged and have every right to seek redress. Instead, I am disappointed to know that my grandchild, who I trusted to continue to commit to the values I hold dear, instead eschewed those values leading to this situation. I apologize for Lane Elliott's actions, and I can only hope that my grandchild will do what is right. Please do not hesitate to call upon me if I may be of any assistance.

Best Regards,
Amos Floyd

**THIS TEXT IS ONLY TO ASSIST STUDENTS IN READING
THE HANDWRITTEN LETTER IN EXHIBIT 5! NO TEAM
MAY OFFER EXHIBIT 5A INTO EVIDENCE!**

EXHIBIT 6

SEPARATION AGREEMENT AND RELEASE OF ALL CLAIMS

This SEPARATION AGREEMENT AND RELEASE OF ALL CLAIMS (“Agreement”) is by and between Thunderbolt Security, Inc. (“Employer”) and Robin McLean (“Employee”), effective as of the date of the Employee’s signature below (“Effective Date”).

WHEREAS, the parties wish to settle all matters related to the Employee’s Employment with and termination from the Employer, and all other claims, controversies, charges, or disputes which exist or may arise between the parties because of Employee’s employment with and termination from Employer;

NOW THEREFORE, in consideration of the mutual promises and other good and valuable consideration set forth herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. No Admission of Liability. It is understood that by entering into this Agreement, the Employer is not admitting any wrongful conduct or violation of the law and the Employer enters into this Agreement solely in the interest of resolving all claims and issues relating to the Employee’s employment and separation therefrom.
2. Termination of Employment. Employee’s last day of employment with the Employer is January 15, 2021 (“Termination Date”). Employee agrees that Employee has ceased performing all job duties for the Employer as of the Termination Date.
3. Consideration. In consideration of Employee’s promises, covenants, and general release of claims contained herein, within thirty days of the Effective Date of this Agreement, the Employer agrees that it will pay to the Employee a lump sum payment a gross amount equal to \$10,000.00 less applicable deductions, for which an IRS form W-2 will be furnished (“Severance Pay”). Furthermore, Employee’s paid health insurance coverage will continue for 90 days following the Effective Date of this Agreement. The Employee may elect to pay for COBRA medical coverage under such coverage provided by COBRA, and Employee may elect to convert to any other applicable group insurance coverage according to any individual conversion privileges contained in such plans. Employee acknowledges that the consideration provided herein constitutes consideration in exchange for Employee’s execution of this agreement and that such is a benefit that Employee would not have been entitled had Employee not executed this Agreement.
4. General Waiver and Release. In exchange for the benefits and other consideration set forth in this Agreement, Employee hereby RELEASES AND FOREVER DISCHARGES the Company and all of its subsidiaries, affiliates, predecessors, successors, and assigns and all of their respective present and former partners, officers, directors, shareholders, agents, independent contractors, employees, representatives, and attorneys, in their representative as well as their individual capacities, from any and all claims, demands, damages, costs, expenses, and causes of action of any kind or nature, whether known or unknown, including, without limitation, any claims alleging violation or breach of any

EXHIBIT 6

federal, state, or local statute, regulation, ordinance or common law, and/or breach of any contract including, specifically without limitation the Age Discrimination in Employment Act of 1967 (“ADEA”), the Older Worker Benefit Protection Act of 1990 (“OWBPA”), Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans with Disabilities Act, the Fair Labor Standards Act, the Family and Medical Leave Act of 1993, the Employee Retirement Income Security Act, the Worker Adjustment and Retraining Notification Act, and Kentucky wage payment statutes that Employee has or may have on account of or arising out of or in any way related to (a) Employee’s employment by Employer, (b) the termination of Employee’s employment by Employer, (c) the Retirement Program, and/or any and all matters, transactions or things occurring prior to the Effective Date. Nothing in this Agreement prohibits Employee from filing a charge of discrimination with the Equal Employment Opportunity Commission or a similar state or local administrative agency. Employee acknowledges, however, that in the event Employee files such a charge Employee waives any right to collect any individual monetary recovery of any kind.

5. Return of Property. Employee affirms and warrants that Employee has or shall return to the Employer all Employer property in a satisfactory condition including, but not limited to, all keys, credit or access cards, equipment, documents, copies of documents, draft and final reports, materials, studies, disks, computers, and all Employer information stored in any electronic form.
6. Choice of Law, Venue, and Jurisdiction. This Agreement shall in all respects be interpreted, enforced, and governed under the laws of the Commonwealth of Kentucky. The parties agree that any action relating in any manner to this Agreement or to Employee’s Relationship with Employer must be pursued in federal or state court located in Castlen County, Kentucky and the parties specifically consent and submit to the exclusive jurisdiction of such courts.
7. Final Resolution. Employee accepts the benefits of this Agreement as full compensation and resolution of any and all claims, as stated herein, including attorney fees and covenants that Employee shall not file suit to recover attorney fees or compensation in any form.
8. Entire Agreement. Except as provided herein, this Agreement sets forth the entire Agreement between the parties and supersedes any and all prior agreements or understandings, oral or written, between the parties relative to the provisions herein. The terms of this Agreement may not be modified other than in a writing signed by both parties.
9. Notice of Rights under the OWBPA/ADEA. Employee further expressly and specifically waives any right or claims under the Age Discrimination in Employment Act and the Older Workers Benefit Protection Act (collectively the “Act”). Employee acknowledges and agrees that this waiver of any right or claim under the Act and this

EXHIBIT 6

Agreement (hereinafter “Waiver”) is knowing and voluntary and Employee specifically agrees and represents as follows:

- A. This Agreement and Waiver are written in a manner which Employee understands;
- B. Employee has read and understands this Agreement and this Waiver and Employee executes this Agreement (including the Waiver) voluntarily and of Employee’s own free will;
- C. Employee understands that this Waiver specifically relates Employee’s rights or claims arising under the act;
- D. By accepting this Agreement and this Waiver, Employee does not waive any rights or claims under the Act that may arise after the date of Employee’s execution of this Agreement;
- E. Employee is providing this Agreement and this Waiver to Employer in exchange for consideration in addition to anything of value to which Employee is already entitled;
- F. **Employee is hereby advised by Employer in writing to consult with counsel prior to executing this Agreement and Waiver;**
- G. Employee shall have a period of 45 days within which to consider and accept this Agreement and Waiver as set forth below; and
- H. Employee has a period of seven (7) days following Employee’s execution of this agreement and Waiver to revoke this agreement as set forth below.
- I. Employee acknowledges that ADDENDUM A to this Agreement sets forth the age groups of employees and factors the Employer used to determine separation.

10. Consideration and Revocation Periods: Effective Date. To accept this Agreement, Employee must return a signed and dated copy of it to Riley Gallatin, Director of Human Resources, 9619 Blackburn Street, Scarborough, KY on or before the 45th day after it is first delivered to Employee. To revoke this Agreement, Employee must deliver written notice of revocation to the above address on or before the seventh day after the Employee signs it. This Agreement shall not become effective or enforceable until this revocation period has expired and both parties have signed and dated this agreement; in such case, the eighth day after it is signed shall be the “Effective Date.”

AGREED AND ACCEPTED

EMPLOYEE:

By: /s Robin McLean

Print Name: Robin McLean

Date: January 17, 2021

THUNDERBOLT SECURITY, INC:

By: /s Riley Gallatin

Print Name: Riley Gallatin

Title: Director of Human Resources
Date: January 17, 2021



EXHIBIT 7

ADDENDUM A TO SEVERANCE AGREEMENT

THUNDERBOLT SECURITY INCORPORATED REDUCTION IN FORCE WORKSHEET SECURITY OFFICERS

CURRENT STAFFING

Current Officers By Age	Count	%
Aged 39 and Under	50	33.3%
Aged 40 and Over	100	66.7%
Total	150	100%

OFFICERS TERMINATED/REMAINING

	Terminated	% Terminated	Remaining	% Total Remaining
Aged 39 and Under	25	50%	25	50%
Aged 40 and Over	75	75%	25	25%

TERMINATION CRITERIA

	<u>5+ Incidents of Minor Discipline</u>	<u>1+ Incident(s) of Major Discipline</u>
Aged 39 and Under	0	25
Aged 40 and Over	50	25

Definitions:

Minor Discipline - written reprimands or suspensions from work for less than five days

Major Discipline - last-chance agreement, a demotion, or suspensions from work of five days or more

EXHIBIT 8

THUNDERBOLT SECURITY, INC HIRING DECISIONS, SEPTEMBER 2021 - OCTOBER 2022

Month	Applicants			Hired		
	Total	Aged under 40	Aged 40 and Over	Total	Aged under 40	Aged 40 and Over
September 2021	20	20	0	10	10	0
November 2021	21	21	0	10	10	0
January 2022	22	12	10	10	8	2
March 2022	15	15	0	10	10	0
April 2022	18	13	5	10	5	5
May 2022	24	24	0	10	10	0
July 2022	19	19	0	10	10	0
August 2022	25	14	11	10	6	4
September 2022	21	17	4	10	6	4
October 2022	15	15	0	10	10	0

FINDINGS

Total Candidates: 200

Total Candidates under 40: 170

Total Candidates 40+: 30

85% of those hired under 40

15% of those hired over 40

60% of groups had no candidates over 40

Of the four groups with candidates over 40 candidates, there were 56 candidates *under 40*

50% of the candidates *over 40* were hired. (15 out of 30)

EXHIBIT 8

Month	Total Applicants	Applicants 40 and Over	Applicants Hired (40 and Over)	% Applicants Hired (40 and Over)	% of 40 and Over Candidates Hired*
January 2022	22	10	2	9.1%	20.0%
April 2022	18	5	5	27.8%	100.0%
August 2022	25	11	4	16.0%	36.4%
September 2022	21	4	4	19.0%	100.0%

* Of the applicants that were aged 40 and over, how many within that class were hired

EXHIBIT 9

SCARBOROUGH COMMUNITY COLLEGE

Record of: Robin McLean

Degree received: Incomplete

Date Conferred:

Degree Type: Incomplete

Track: N/A

FALL 2021

Course Num.	Course Name	Credits	Grade	Pts
SEC 101	INTRODUCTION TO SECURITY PRINCIPLES	3	C	6.00

	Earned Hours	PTS	GPA
Term:	3	6	2.0
Cumulative:	3	6	2.0

SPRING 2022

Course Num.	Course Name	Credits	Grade	Pts
CIT 105	INTRODUCTION TO COMPUTERS	3	B+	10.50
CIT 130	PRODUCTIVITY SOFTWARE	3	B	9.00

	Earned Hours	PTS	GPA
Term:	6	19.50	3.25
Cumulative:	9	25.5	2.83

EXHIBIT 9

FALL 2022

Course Num.	Course Name	Credits	Grade	Pts
CIT 111	COMPUTER HARDWARE AND SOFTWARE	3	B	9.00
CIT 150	INTERNET TECHNOLOGIES	3	B	9.00
SEC 210	MODERN TECHNOLOGY IN SECURITY	3	B+	10.50

	Earned Hours	PTS	GPA
Term:	9	28.5	3.17
Cumulative:	18	54	3.00

*****TRANSCRIPT TOTALS*****

TOTAL CREDITS	PTS	GPA
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18	54	3.00
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END OF OFFICIAL RECORD

EXHIBIT 10

SCARBOROUGH COMMUNITY COLLEGE

Record of: Ashley Owen

Degree received: Associates
Date Conferred: December 16, 2023
Degree Type: Security
Track: Cyber Security

FALL 2020

Course Num.	Course Name	Credits	Grade	Pts
ENG 101	WRITING I	3	B	9.00
SEC 101	INTRODUCTION TO SECURITY PRINCIPLES	3	B	9.00
CYS 101	CYBERSECURITY ORIENTATION AND FOUNDATIONS	3	B+	10.50
CYS 130	INTRODUCTION TO CYBER FORENSICS	3	B	9.00
CYS 140	DATA SECURITY	3	A-	11.10

	Earned Hours	PTS	GPA
Term:	15	48.6	3.24
Cumulative:	15	48.6	3.24

SPRING 2021

Course Num.	Course Name	Credits	Grade	Pts
ENG 102	WRITING II	3	B	9.00
SEC 110	PRINCIPLES OF ASSET PROTECTION	3	B-	8.10
SEC 240	INTRODUCTION TO CORPORATE AND INDUSTRIAL SECURITY	3	B-	8.10
CYS 145	FOUNDATIONS OF CYBER SYSTEMS	3	A	12.00
CYS 265	NETWORK AND CLOUD FORENSICS	3	A-	11.10

EXHIBIT 10

	Earned Hours	PTS	GPA
Term:	15	48.3	3.22
Cumulative:	30	96.9	3.23

FALL 2021

Course Num.	Course Name	Credits	Grade	Pts
SEC 160	HUMAN, ORGANIZATIONAL, AND SOCIETAL SECURITY	3	B-	8.10
SEC 211	LIABILITY AND LEGAL ISSUES	3	C+	7.50
CYS 150	SECURE SOFTWARE DEVELOPMENT	3	B	9.00
CYS 285	CRYPTOGRAPHY	3	B	9.00
CYS 249	ETHICAL HACKING	3	A-	11.10

	Earned Hours	PTS	GPA
Term:	15	44.7	2.98
Cumulative:	45	141.6	3.15

SPRING 2022

Course Num.	Course Name	Credits	Grade	Pts
SEC 232	FIREARMS AND LESS THAN LETHAL WEAPONS IN SECURITY	3	B	9.00
CYS 247	LINUX SECURITY	3	B	9.00
CYS 248	NETWORK SECURITY AND AUTHENTICATION	3	A-	11.10
CYS 265	NETWORK AND CLOUD FORENSICS	3	A	12.00

	Earned Hours	PTS	GPA
Term:	12	41.1	3.43
Cumulative:	57	182.7	3.20

EXHIBIT 10

FALL 2022

Course Num.	Course Name	Credits	Grade	Pts
SEC 210	MODERN TECHNOLOGY IN SECURITY	3	C+	7.50
SEC 228	UNMANNED SECURITY TECHNOLOGY APPLICATIONS	3	B	9.00
CYS 266	MOBILE DEVICE FORENSICS	3	A-	11.10

	Earned Hours	PTS	GPA
Term:	9	27.6	3.07
Cumulative:	66	210.3	3.19

*****TRANSCRIPT TOTALS*****
TOTAL CREDITS PTS GPA

66 210.3 3.19

END OF OFFICIAL RECORD

EXHIBIT 11

From: Elliott, Lane
Sent: January 4, 2021 8:32 AM
To: ALLCLIENTS
Cc: ACCOUNTMANAGERS
Subject: Introduction and Renewed Commitment to You

Dear clients,

As you are all likely aware, there have been some changes at Thunderbolt Security, Inc. Amos Floyd, my grandfather, whom I know many of you had known personally, retired on December 31, 2020. His dedication to his clients and to his employees cannot be overstated, and I know that all of you will join me in wishing him well in retirement.

With that, it falls to me to take up the proverbial torch and carry on his legacy. Again, I am sure my grandfather has spoken about me to many of you, but I am a native of Scarborough who spent a number of years in Midlands City, Midlands working as a Senior Sales Manager for Flare Security Products. I spent all last year with my grandfather getting up to speed with all the security practices and client preferences. I can assure you that in the coming years, I plan to provide the service you have come to expect.

Part of that service is anticipating the security needs of each of our clients and tailoring the appropriate responses and precautions. As your businesses reopen in the coming months, our account managers will help address not only your security needs in terms of numbers of security officers, but technology as well. As time goes on, threats to your businesses become more sophisticated, and Thunderbolt is dedicated to meet those threats with just as much sophistication.

To that end, we will be working to provide you with 21st century solutions to meet your security needs. That means 21st century security technology and tech-savvy, 21st century security guards. I understand that cost and ease of use have been obstacles to integrating technology in the past, but I assure you that Thunderbolt will help you find the most reliable, intuitive, and user-friendly technological solutions to your security needs without breaking the bank. We will also ensure that our guards are trained and ready to take on this technological change with you. Rest assured, with Thunderbolt, integrating modern technological solutions into your security plan has never been easier.

My grandfather was a great man and visionary in Scarborough. I certainly have big shoes to fill, but I look forward to that challenge. Please do not hesitate to reach out to Thunderbolt for any questions and concerns. I appreciate your continued business.

Thank you,

Lane Elliott

EXHIBIT 12

COREY SPENCER

322 Beck Lane | Midlands City Midlands

EDUCATION

Midlands State University College of Law
Juris Doctor, *summa cum laude*, 2007

Midlands City, Midlands

Midlands State University
Bachelor of Arts, Political Science, *summa cum laude*, 2004

Midlands City, Midlands

PROFESSIONAL LEGAL EXPERIENCE

Midlands State University College of Law
Associate Professor of Law

Midlands City, Midlands
August 2019 - present

Equal Employment Opportunity Commission
Investigator/Trial Attorney

Midlands City, Midlands
October 2009 - August 2019

Webb & Skaggs
Associate Attorney

Midlands City, Midlands
May 2007 - October 2009

BAR ADMISSIONS

Midlands Supreme Court (2007 - present)
United States District Court for the Northern and Southern Districts of Midlands (2007 - present)
United States Court of Appeals, 10th Circuit (2007 - present)
United States Supreme Court (2010 - present)

SELECTED ARTICLES

Sticks and Stones in Camouflage: Review of Coded Language in Employment Cases, Midlands Law Review, May 2022

To Catch a Discriminator: Ethical Use of Fake Job Applications to Discover Employment Discrimination, Midlands Bench and Bar, August 2021

Age Discrimination: Do Courts Even Care Anymore? Employment Litigator, December 2020

SELECTED PRESENTATIONS

The EEOC Process from Start to Finish, Midlands Bar Update, September 2023

The “But For” Standard in Employment Discrimination Cases: Why State Court May be a Better Bet than Federal, Labor and Employment Law Basics, January 2022.

EXHIBIT 13

Max Casey

1407 Graymalkin Lane | Scarborough, KY

EDUCATION

University of Massachusetts Lowell

Master of Arts, Security Studies,
Industrial and Economic Security Concentration, 2000

Lowell, MA

University of Massachusetts Lowell

Bachelor of Science, Criminal Justice, *cum laude*, 1998

Lowell, MA

PROFESSIONAL EXPERIENCE

Scarborough Community College

Chair, Security Studies Department

Scarborough, KY

2021 - present

Scarborough Community College

Instructor, Criminal Justice Department

Scarborough, KY

2014 - 2021

Glaser Patel

Security Specialist

Midlands City, ML

2000 - 2014

PROFESSIONAL MEMBERSHIPS

American Association for Industrial Security International
(Certified Protection Professional)

SELECTED ARTICLES

The Technological Gap: New Technology Becoming More User Friendly, Security Quarterly, Fall 2019

Generational Bridge: Leveraging Experience for the Next Generation of Security Officers, Security Quarterly, Winter 2017

Legend of the Mall Cop: The Stereotype that Just Won't Die, Night Owl, September 2015

SELECTED PRESENTATIONS

The Overeager New Hire: Excited Newbie or Rogue Agent? Annual National Industrial Security Conference, July 2022

Do Tools Make the Security Officer? Dangers of Overreliance on Technology, Annual National Security Conference, June 2018

EXHIBIT 14

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Robin McLean
2022 LaRue Park Way
Scarborough, KY

From: Kentucky District Office
Hopkins Drive
Frankfort, KY

EEOC Charge No.
999-2023-99999

EEOC Representative
Logan Murphy, Investigator Support Asst

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

Your allegations did not involve a disability as defined by the Americans with Disability Act.

The Respondent Employs less than the required number of employees or is not otherwise covered by the statutes.

Your charge was not timely filed with the EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.

The EEOC issues the following determination: The EEOC will not proceed further in its investigation and makes no determination about whether further investigation would establish violations of the statute. This does not mean that the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.

The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

Other (briefly state):

EXHIBIT 14

- NOTICE OF SUIT RIGHTS -

TITLE VII, The Americans with Disabilities Act, the Genetic Information

Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice;** or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay for any violations that occurred more than 2 years (3 years) before you file suit may not be collectable.**

On behalf of the Commission

/s Silas Coogle
District Director

9/5/2023
Date Mailed

cc:

Riley Gallatin
Director of Human Resources
THUNDERBOLT SECURITY, INC
9619 Blackburn Street
Scarborough, KY

EXHIBIT 15

Izzo Law Group

165 Eaton Place, Frankfort, KY 40601
502-555-8719 www.izzolawgroup.com



January 26, 2024

Hon. Connie M. Kremer
Law Offices of Allison and Kremer, LLP
531 Midlands Blvd., Suite 100
Scarborough KY, 42789

RE: *McLean v. Thunderbolt Security, Inc.*, 23-CI-01979 (Castlen Circuit Court, Div. II)

Dear Ms. Kremer,

This letter is in regards to the above referenced case involving your client, Robin McLean. Though Thunderbolt Security Inc. ("Thunderbolt") maintains that it, at all times, treated your client in a lawful manner, notwithstanding your client's baseless allegations to the contrary.

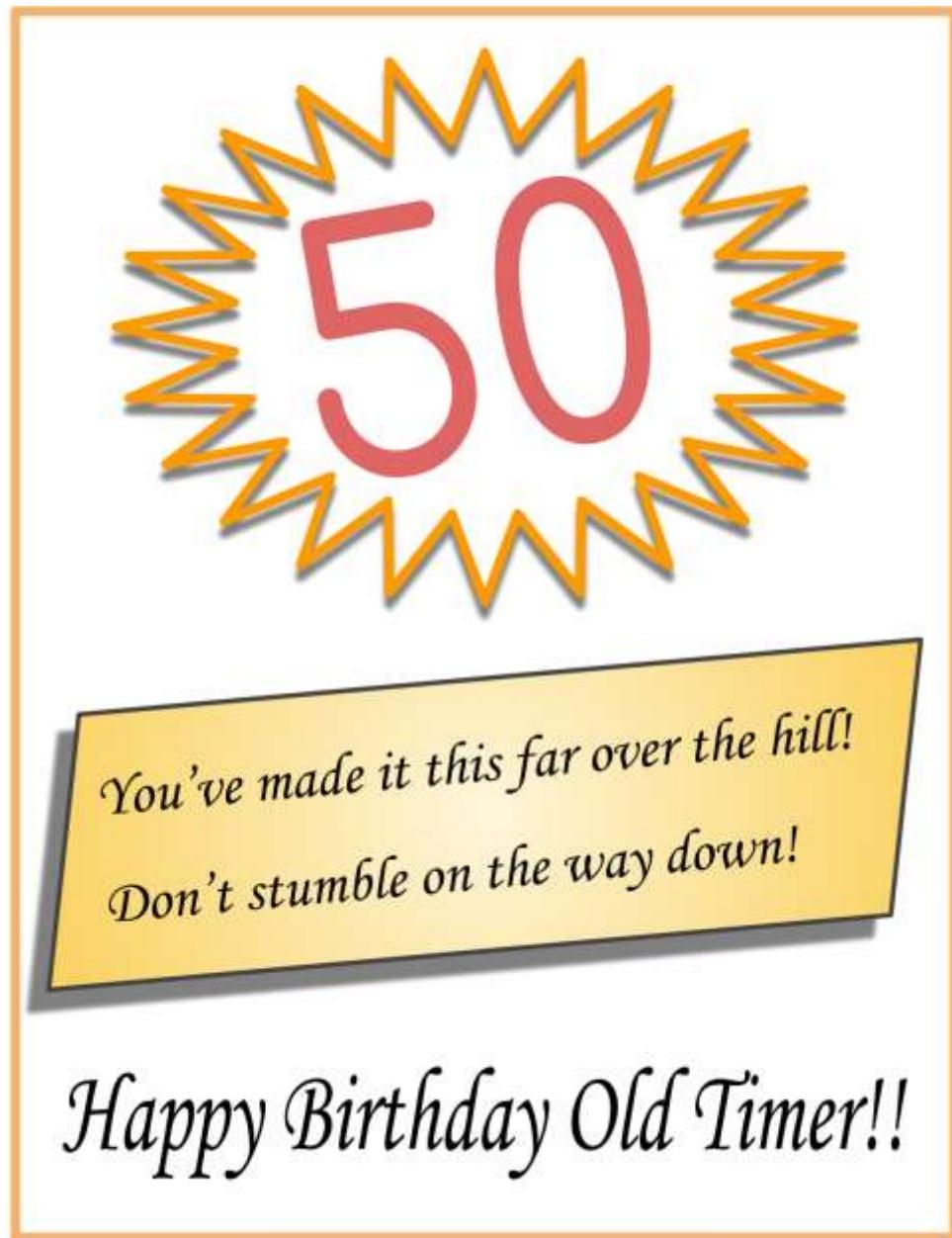
Nonetheless, Thunderbolt believes that it is in the best interest of all parties to resolve this matter without further delay or expense. In an effort to expedite the resolution of this matter, Thunderbolt has authorized me to extend a settlement officer of \$10,000.00 in exchange for the full and final resolution of any and all claims against Thunderbolt including, but not limited to, voluntary dismissal with prejudice of the above referenced litigation.

Please contact our office at your earliest convenience to discuss the prompt resolution of this matter.

Regards,

/s Erin Izzo
Erin Izzo
Izzo Law Group

EXHIBIT 16



ROBIN MCLEAN v. THUNDERBOLT SECURITY, INC

CASE CHANGES AND CORRECTIONS – NOVEMBER 15, 2024

Title Page and KHSMTA Info	Correct document date (Now 11-15-2024)
Witness List	Correct document date (Now 11-15-2024)
Special Instructions, p. 3	New Special Instruction 9, which reads as follows: “Exhibit 5A is a typed version of the handwritten letter in Exhibit 5. It is included <u>solely</u> because of readability concerns with Exhibit 5 in its current form. Exhibit 5A is NOT admissible in any form and may not be used for any other purpose than to assist with reading and understand Exhibit 5.”
Affidavit of Robin McLean, p. 8, lines 224-226	Sentence reading: “And this apparently got back to Mr. Floyd; he sent me a nice handwritten letter at the start of 2024 apologizing for the actions of his grandchild and that he wished he had instilled better value in Lane.” changed to “And this apparently got back to Mr. Floyd; he sent me a nice handwritten letter at the start of 2024 apologizing for the actions of his grandchild and stating that he wished he had instilled better value in Lane.”
Affidavit of Corey Spencer, p. 4, lines 96-98	Sentence reading: “The EEOC has issued enforcement guidance in the past that advises employers that coded language to rise to the level of actionable discrimination.” changed to “The EEOC has issued enforcement guidance in the past that advises employers that coded language may give rise to the level of actionable discrimination”
Affidavit of Lane Elliott, p. 3, lines 66-68	Sentence reading: He took one of those senior account managers I had trouble with Celia Knox, under his wing to prepare her to take over Thunderbolt in five to ten years.” changed to “He took one of those senior account managers I had trouble with, Celia Knox, under his wing to prepare her to take over Thunderbolt in five to ten years.”
Affidavit of Lane Elliot, p. 8, lines 229-231	Sentence reading: “Just as a precaution, after the EEOC investigation, we have removed language like “young blood” and “tech savvy” from our job postings.” changed to “Just as a precaution, after the EEOC investigation, we have removed language like “fresh blood” and “tech savvy” from our job postings.”
Affidavit of Lane Elliot, p. 7, lines 193-194	Sentence reading: “Only two candidates who applied were McLean and Owen.” changed to “The only two candidates who applied were McLean and Owen.”
Exhibit List	New listing of Exhibit 5A, reads: 5A – Typed Version of Letter from Amos Floyd to Robin McLean (NOT TO BE ADMITTED)
Exhibit 1	Image quality of job posting improved (NO CHANGES MADE TO EXHIBIT CONTENT)

Exhibit 2	Image quality of job posting improved (NO CHANGES MADE TO EXHIBIT CONTENT)
Exhibit 5A	New Exhibit added – SOLELY TO HELP IN READING EXHIBIT 5, EXHIBIT 5A MAY NOT BE INTRODUCED FOR ANY PURPOSE.
Exhibit 7	Percentages for “Current Officers By Age” table corrected; 33.3% of officers are aged 39 and under; 66.7% of officers aged 40 and over
Exhibit 8, p1	Hiring statistics for March 2002 corrected to indicate that all 10 of those hired were under age 40.
Exhibit 9, p. 1	Robin McLean’s Fall 2021 Course Record, course number corrected to SEC 101. Second Spring 2022 course changed from Modern Technology in Security to Productivity Software. Formatting for Spring 2022 course record fixed.
Exhibit 10, p. 3	Ashley Owen’s Fall 2022 Course Record, course SEC 210 named changed to MODERN TECHNOLOGY IN SECURITY

QUESTIONS:

Regarding case law, is *Charalambik v. Ashbury University* supposed to be the 2014 case *Charalambakis v. Asbury College*?

No, but they are connected. *Charalambakis v. Ashbury College*, No. 2012-CA-0002420-MR 2014 WL 346068 (Ky. App. Jan. 2014) was decided by the Kentucky Court of Appeals. John Charalambakis, the appellant, lost before the Court of Appeals and sought discretionary review in the Kentucky Supreme Court. The case used in the case law is Kentucky Supreme Court opinion affirming the Court of Appeals and is correctly styled.

What is the significance of Robin McLean’s transcript having CIT courses and Owen’s transcript having CYS courses? Are these supposed to be the same?

No. As Robin states in their affidavit, Robin took courses in basic computer courses and courses related to computer and technology systems, hence Computer and Information Technology (CIT) courses. Owen’s CYS courses are cyber security courses.

Regarding the EEOC letter, there is no stipulation waiving the right of a custodian so that the business record hearsay exception can be used. Is the lack of a stipulation intentional, or should the letter be admissible under another exception or under case law?

We believe the case materials and the rules as written provide sufficient answer to that question.